

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

against

DENIS RANCOURT

MOTION

HEARD BEFORE MASTER C. MACLEOD
on October 6, 2011 at OTTAWA, Ontario

APPEARANCES:

Mr. R. Dearden

Denis Rancourt

Counsel for the Plaintiff
Self represented

T A B L E O F C O N T E N T S

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THE COURT: Good morning.

MR. DEARDEN: Good morning, Master. Master, I'm Rick Dearden. I'm representing the Plaintiff, Professor St. Lewis who is sitting to my right. And my associate, Ryan Kennedy, is here. And this is the Defendant, Mr. Denis Rancourt.

Master, I've prepared a compendium of arguments so that I could get through these submissions, I hope, in 15 to 20 minutes - that I'll hand up to you. And I've also had the refusals charts reproduced on a standalone basis in case you want to write on them. And would a pleadings book...

THE COURT: Yes, that would be helpful.

MR. DEARDEN: ...be helpful?

THE COURT: Thank you.

MR. DEARDEN: Master, with your permission, the outline of my argument would be I want to take two minutes to tell you how we ended up here. So a backdrop and then I'll get into Justice Perell's decision in the Rothmans case which there's - just several sentences in there that I'll draw your attention to that are in tab four of the compendium on the law that governs this motion and the I will deal with Claude Lamontagne's undertakings and the one refusal. So he's the shortest in the - and it's the second chart that I handed up to you, and then I'll deal with Mr.

Rancourt's refusals during his cross-examination.

THE COURT: All right. Thank you.

MR. DEARDEN: So, Master, Professor St. Lewis is a

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tenured Professor at the University of Ottawa's Common Law Faculty, and her life work is dedicated to the promotion of equality rights, and in particular, racial equality. And the Defendant, Mr. Rancourt, is a former physics Prof at the University of Ottawa who the University terminated, and he has a labour grievance going on with the University on that now. He describes himself, on his Facebook page, as an anarchist, and it's our position in the Statement of Claim that he's published a number of defamatory statements about Professor St. Lewis, one of which is that she was "the house negro" of Allan Rock who is the President of the University of Ottawa.

When I read his Statement of Defence, coupled with his claim to be an anarchist, I quickly concluded that we needed an immediate mandatory mediation, and a mediator such as former Regional Senior Justice Jim Chadwick who does know libel law and, obviously, is quite skilled in mediation. So I filed the motion to compel Mr. Rancourt, who refuses to attend a mandatory mediation - I filed a motion for that and to appoint former Regional Senior Justice Chadwick as the mediator of the mandatory mediation. And the reason I did that is, I predict that if we can't settle this in a mandatory mediation real soon, this is going to be a very costly piece of litigation and it's gonna devour quite a bit of court resources.

MR. RANCOURT: Master MacLeod, can I ask a question or can I make an objection?

THE COURT: You can make an objection.

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MR. RANCOURT: I would like to know how to proceed if I believe that some of the statements that are being made or incorrect.

THE COURT: Well make notes and you'll get your turn. So, normally it works this way. Mr. Dearden makes his submissions and then you make yours and then he gets to reply and unless there's - if you have an objection to something as being improper then I'll hear you on the objection and rule on it and then we'll proceed.

MR. RANCOURT: Well...

THE COURT: But the best thing to do if you disagree with something is to make notes and then when it's your turn I'll hear from you. The other thing that's important is that I'm hearing, at the moment, just a description, basically, of what this is all about and then Mr. Dearden's submissions, and that's not evidence. The evidence, as you are aware, is what's in the affidavits and so - and normally the motion is decided on the paper record with the submissions of the parties and I won't be hearing evidence today, although I can do that in exceptional circumstances and so if there is a need to do that then I can do a witness orally, but that's an exception, so...

MR. RANCOURT: I would like to make an objection.

THE COURT: All right.

MR. RANCOURT: I have - anarchism is a political theory and I have given invited talks at academic conferences about anarchism and so I feel that this is not relevant. You know that - political

beliefs and so on.

THE COURT: Okay, well that, I think is - will be part of your submission and I'll hear that when we come to it. I don't think that that prevents Mr. Dearden from setting out his client's position which is what he's doing now. I just need to understand what his position is, then what yours is and then we'll proceed.

MR. DEARDEN: I was simply, Master, trying to explain the rationale why I brought the Motion for mandatory mediation and to have someone skilled like Regional - former Regional Senior Justice Chadwick to do that - conduct that mediation. And so where that brings us is, Mr. Rancourt opposed. And in the support of his opposition of having a mandatory mediation in this libel action, he filed two of his own affidavits and he filed another affidavit by one of his supporters in the labour grievance that he has going on and that is Professor Claude Lamontagne, also from the University of Ottawa.

So I cross-examined both of them on September the 6th and the refusals and the failure of Mr. Lamontagne to honour two voluntary undertakings he gave us is the reason why we're here before you today.

Tab four, Master, is extracts from the Rothmans decision. We have the full case and I'll hand up to you the full version, Master, but I'm asking you to turn up paragraph 142, please, and I'll hand up the full version.

THE COURT: Thank you. I have access to the full

position on line of course.

MR. DEARDEN: Yes. In paragraph 142, Master, the simple legal principle that,

"Relevancy is a key determinative of the proper question and relevancy is determined by reference to the matters in issue in the motion in respect of which the affidavit has been filed and by the matters put in issue by the deponent's statements in the affidavit."

and if you go down to the fourth bullet that you see in paragraph 143...

THE COURT: Yes.

MR. DEARDEN: ...and

"The questions must be relevant" and it's the "B" part,

"The matters raised in the affidavit by the deponent even if those issues are irrelevant to the application or motion."

and then the last bullet we see on the bottom of the page,

"If a matter is raised in or put in issue by the deponent in his or her affidavit, the opposite party is entitled to cross-examine on the matter even if it is irrelevant and immaterial to the motion before the Court."

And I think you put it this way in the Caputo, Master, which was if you put it in your affidavit you're admitting the relevance and you can be cross-examined on it, in a nutshell.

And my submission is all of the questions and productions that are in issue in the charts before you are directly mentioned and raised in the

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affidavits of either Mr. Lamontagne or Mr. Rancourt.

So I'll deal first, your Honour, with the undertakings. If you turn to - still on tab four - if you turn to paragraph 146 of Justice Perell's decision in Rothmans you should have highlighted the second sentence which says: "If an undertaking is voluntarily given then it simply must be honoured." And we have two of those, in my submission, with Mr. Lamontagne's affidavit which you'll find - you'll find Mr. Lamontagne's affidavit at tab three of the compendium and the questions on cross-examination that are in issue in terms of the voluntary undertakings you'll find at tab five of the compendium.

So his affidavit referred to some dictionary definitions in paragraph eight of his affidavit. And I asked him, as you see in Question 56: "I'd like you to confirm what dictionaries you looked and give me a copy of the entries that you are referring to" and he answers "Sure". And we came to it about three pages later, so if you flip the page at tab five we end up from page 15 of the transcript to page 18 of the transcript, question 66: I say, "But what I don't want you to do is to guess. Okay? So what you're going to provide me as to the dictionaries and a copy of the entry in them, I only want to know what you remember" and he says "Okay". That's a voluntary undertaking on dictionaries which has not been fulfilled yet.

The second undertaking is with respect to members of a committee that is called The

Committee in Defence of Education, which is part of this labour grievance that Mr. Rancourt has with the University in his termination, and Mr. Lamontagne - who, by the way, is supposed to be an expert and that's what he's being put in for in his affidavit to oppose the mandatory mediation. He's supposed to be an expert. So I asked - he chairs this committee which is supporting Mr. Rancourt's labour grievance against the University of Ottawa, and at the third page of tab five - or tab five of the compendium, I didn't even ask for this, he volunteered it and that is the members - the names of the people that are on that committee. He just - I'm asking him questions about the committee and he says "Denis is on it" which is Mr. Rancourt, and he says at Question 107: "I can provide you with the names of the people that were on that committee and get it from the beginning", and I say "Okay, fair enough". And I said "Has Mr. Rancourt been on that committee from its inception?" The answer is "Yes". And the reason, of course, I want this information. I want to know something about this committee that Mr. Lamontagne chairs that's supporting Mr. Rancourt's labour problems with the University, is to challenge his independence as an expert that he - on the information that he has in his affidavit. And it's an affidavit, Master, that was written - the first draft was written by Mr. Rancourt. I didn't put those pages of the transcript in the compendium but you'll find that information at pages 10 and 11 of the transcript.

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5 And so both refusal number one of Claude Lamontagne and refusal number one of Denis Rancourt go to the issue of the independence of Claude Lamontagne as an expert witness which has been put forth as evidence and in opposition to the mandatory mediation motion. And I've asked them to produce copies of the drafts of the affidavit as well as any exchanges of - by email or any documents that relate or are relevant to the production of Mr. Lamontagne's affidavit that you see at tab three of the compendium.

10 And if you look at tab six of the compendium, Master, this is my cross-examination of Mr. Rancourt, and I ask him in Question 28:

15 "I'd like you to produce all of the records and communications you've had with Claude Lamontagne regarding his affidavit that you've attached as Exhibit "E" to your August 25th affidavit."

20 And he says: "I take note of that request" and we have a back and forth and if you flip the page in my, what I'll call "the debate" with Mr. Rancourt as the deponent of this affidavit, I say at Question 33:

25 "I've asked you to produce those records - documents such as emails, memos, notes - whatever you have between you and Claude Lamontagne regarding his affidavit that you attached as Exhibit "E" to your August 25th affidavit."

30 He says - answer: "It's for me to decide what I believe is relevant in this cross-

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examination about this affidavit about a motion".

Question: "So the alleged expert opinion of Claude Lamontagne is not relevant to this motion? Is that what you are telling me?"

Answer: "The expert opinion is relevant" says Mr. Rancourt.

So there's no issue that his expertise in the affidavit is all relevant and I'm entitled, in my respectful submission, Master, to challenge the independence of Claude Lamontagne in giving any type of opinion to the Court who is deciding on my mandatory mediation motion.

And we know that there is emails exchanged and we know there are drafts and it you turn to tab seven of the compendium, this is Mr. Lamontagne's cross-examination at tab seven of the compendium. I had asked him at Question 26:

"What emails have you exchanged with him about this libel action?"

Answer: "Very short things having to do with us meeting and discussing versions of it - versions of my affidavit"

Question: "Versions of your affidavit? Do you have a copy of those emails with you today?"

Answer: "No".

"Can you make a copy of those exchanges that you've had with Mr. Rancourt?"

And Mr. Rancourt says: "You don't have to agree to make copies today. You can look into this letter. It would be better." And if you flip the page, at

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Question 30 I indicate,

"What I'm entitled to request from you, sir, is whatever communications, emails, letters, notes, documents Mr. Rancourt provided you for the purpose of preparing this affidavit, and I'm also asking you to produce to me copies of the drafts of this affidavit."

And if you flip the page again, Master, in tab seven, Question 38: "And you'll have email communications?" Answer: "For sure".

And going down to Question 43, "So then we get to the second draft..." because, as I said before, Master, at pages 10 and 11 of the transcript Mr. Lamontagne indicates that the first draft was provided to him by Mr. Rancourt.

Answer to Question 43:

"So then we get to a second draft and a third - three or four?"

Question: "Three or four - okay. So what I'm asking you to do it to produce for me all communications and I don't think I have to explain that to you, you know, emails, letters, handwritten notes. Like, did you have notes?"

"No"

"Okay - anything."

MR. RANCOURT: "We don't have to agree to produce those."

And they didn't.

So my submission, Master, on refusals one and two dealing with Mr. Lamontagne's expert affidavit is that expert opinion is only admissible if it's

5 fair, objective and non-partisan. And I intend to
argue at the mandatory mediation, whenever we get
that motion heard, that Claude Lamontagne's
affidavit - and he as a deponent couldn't be any
further than being non objective and non partisan
as possible. It's the most biased affidavit that
could have been filed and I'm going to object to
it going in. And as proof of that, apart from
10 what I have, is what Mr. Rancourt drafted up for
Mr. Lamontagne and what he communicated to this
so-called expert in the preparation of the
affidavit.

15 And what we do know, Master, is the drafts
exist, so they're readily available and I know
that because at tab eight I've reproduced Mr.
Rancourt's affidavit of documents in the libel
action and he has listed three - in Schedule "A"
he's listed three drafts of an affidavit of Claude
Lamontagne and the final draft as well. And
20 you'll find the drafts listed in items 31, 32, and
33 of tab eight of the compendium.

THE COURT: Yes.

25 MR. DEARDEN: So I've covered off now, Master, on
the refusals chart for Claude Lamontagne - I've
covered off refusal number one and then the two
undertakings that he has not given or fulfilled to
date.

30 I am now going to refusal number two which
still deals with the independence of Claude
Lamontagne as an expert witness 'cause I had asked
- if you turn to tab nine...

THE COURT: Yes.

MR. DEARDEN: ...of the compendium I'd asked him to provide whether he provided - or let me just ask the question, not do it from memory.

Question 63:

"And did he share with you the letters that he solicited from professors, from students, from community members?"

So this is my question to Mr. Rancourt about whether Mr. Lamontagne, who chairs this committee that supports Mr. Rancourt, whether he shared the letters that he solicited from professors, from students, from community members. "When he got responses, did he share those with you?"

And the answer in part is,

"I mean, this is this affidavit affirms that this expert opinion is from Claude Lamontagne and here it is, so I don't - now you are doing a process which is very close to Discovery and preparation for trial so I don't feel..."

and then he says "...I feel you are going too broadly."

Question 64:

"Actually I'll let you know right now, I'm challenging his independence to put in any affidavit relevant to this motion. So that's what I'm doing."

And then the next page is not consecutive - that was page 20 of the transcript. We go to the next page of tab nine of the compendium, which is page 23 of the transcript, and I ask the question - line 18,

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"My question to you, sir, was were you provided by Claude Lamontagne, any responses that he got to the letter that is referred to as January 7, 2009." If you can provided me with any responses."

Answer: "Again, I think this is a place where you're probing too broadly, so it's something I think I can answer later."

Question: "I'm probing his independence of his affidavit that you put in as a so-called expert Opinion in this Motion."

Answer: "And I'm not sure you're entitled to do that in cross-examining an affidavit."

And if you go down to Question 78:

"So you understand the process, Mr. Rancourt, then. I have a right to compel, bring a motion - another motion to compel you to answer, and if we come back I'm going to ask the Master that the Master award costs against you, payable forthwith on a substantial indemnity basis, because there could be nothing more relevant that I'm asking you than to probe the independence of a so-called expert that you have put in as Exhibit E to your affidavit. Okay? So I'll let you think about that."

Answer: "I've given it some thought. Let me answer it. I agree that your question is relevant to the question of the independence of the expert in this case, but I don't agree that it's relevant to a cross-examination of this affidavit."

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And then Question 79 - I asked the same question about solicitation of support from students and community members and he gives me the same answer.

So there, Master, I submit that the Defendant has actually admitted the relevance of the questions about independence, and therefore the answers and productions should be provided on that basis alone. And those are my submissions in terms of the independence of Claude Lamontagne.

And then there's a group of questions that I'll put under the category that Mr. Rancourt attests in both of his affidavits that he cannot financially afford such high fees, which is Jim Chadwick's mediation fees.

We have, at tab one of the compendium, Master, the August 25th affidavit that Mr. Rancourt has put in to oppose the mandatory mediation. And if you go to paragraph 13, please? So tab one, paragraph 13 at the bottom of the page, under the heading "Cannot afford Plaintiff imposed mediator", paragraph 13: "I have been unemployed since 2009 and I have no source of income." And paragraph 16: I cannot financially afford such high fees as a basis for initiating a mediation process."

And you see just below paragraph 16, Master...

THE COURT: Yes.

MR. DEARDEN: ...at paragraph 22, is where reference is made to Claude Lamontagne's affidavit being attached as Exhibit E. I forgot to give you

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that reference at paragraph 22.

5 So we've got those statements that he can't financially afford the fees and then in the second affidavit, sworn August 26th, which you'll find at tab two of the compendium - tab two of the compendium under the heading "Defendant Cannot Afford Plaintiff Imposed Mediator of Mandatory Mediation". Reference is made in paragraph six to a written application that Mr. Rancourt has made to Law Help Ontario, and paragraph seven says "Acceptance into the Law Help Ontario Program is based on financial need based on income."

10 So Mr. Rancourt's both affidavits put in issue squarely whether he can afford to pay mediation fees, whether they be of Jim Chadwick or any mediator really, and they directly - so the questions that I asked and were refused in refusals three to nine, all relate to whether he can afford to pay half of Jim Chadwick's mediation fees or anything for mediation fees. So I asked him - because he co-owns a house and he has 60 per cent interest in a house - a residential property, and I asked him what equity - refusal number three - I asked him what equity he has in it. He wouldn't tell me. I asked how much, if anything, exists in terms of a mortgage on the property. He wouldn't tell me. I asked him if he has a mortgage outstanding on the property. He wouldn't tell me. I asked him if he owned any other real estate. He wouldn't tell me. I asked him if he owned RRSP's. He wouldn't tell me. I asked if he had investments such as shares, mutual funds,

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pension benefits, and I asked him if he had any kind of money that was coming to him - interest on whatever and he refused to answer those questions.

I submit, that they directly relate to an issue he's put in play in opposing the mandatory mediation and imposing the appointment of former Regional Senior Justice to conduct the mediation, in the two affidavits that I've referred you to, and I submit that he should have to answer those questions.

The next one deals with the written application to Law Help Ontario itself. You'll see in refusals 10, 11, 12, and 13, Master, they all deal with this application to Law Help Ontario. I asked him to produce it in refusal 10. I asked him if Law Help Ontario was aware that he owned a residential property. I asked him to produce the application in refusal 12, and any details of what he could afford or not afford in terms of becoming entitled to get help from the Law Help Ontario program. And in refusal 13 I asked him what information he provided to Law Help Ontario with respect to financial need and being entitled to being accepted into their program.

The application in particular, Master, will indicate what Mr. Rancourt declared about his financial situation and what he could or could not afford, which he's put in play in both of his affidavits. It will deal with whether he owns a home, what equity he has in the home, what assets he has, RRSP's and other properties. And it'll also tell us why he was representing himself.

There's questions that will go to the issue of why he's representing himself, and in particular, could he pay some legal fees but not all, or he could afford to - afford a lawyer but he didn't want to pay a lawyer.

So again, the principles that we saw from the Rothmans decision, he's put this in issue. He says he can't afford to pay the mediation fees of Regional Senior Justice - former Regional Senior Justice Chadwick to conduct this mediation, and all of those questions go directed to whether he can or cannot afford to pay mediation fees.

The last two, Master, the last two refusals of Mr. Rancourt are refusals 14 and 15, and, again, these have been put in issue by Mr. Rancourt. If you look at compendium tab one - so the first affidavit he swore, paragraphs 42 and 43. The heading, you'll see on - just below paragraph 41 - the heading is "Issue of Defendant's Liability Insurance" and at the top of the last page of his August 25th affidavit, he attaches as Exhibit J a copy of an email exchange ending with an email from U of O's legal counsel, Alain Roussy, to Mr. Rancourt and he says in paragraph 43: "I believe I have a right to be covered in the instant action by the University of Ottawa's Curry (ph) Liability Insurance Policy."

So I asked him in refusal 14 "Are you going to commence an action to get insurance coverage through the University of Ottawa and/or Curry?" and he refused to answer that. And I asked him in refusal 15 a question arising out of Exhibit J,

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5 which you'll find at compendium tab 10, and that was - compendium tab 10 is this email string where they tell him he's not going to be covered by the Curry Insurance Policy, but if you look at what would be the top right hand corner, page 78 of the Motion Record, or page 57 handwritten - there's an email from Stewart Roberts who's the claims manager of Curry and the last paragraph of that email to Mr. Rancourt, Mr. Roberts says:

10 "We would recommend that you may wish to report this matter to your personal home owner's insurance company."

15 And I asked him if he's done that - in other words does he have coverage or not, and again, going to the issue of whether he can financially afford mediation fees of Jim Chadwick that are in issue in the mandatory mediation.

20 So those are my submissions, Master, on the refusals of Mr. Rancourt and Mr. Lamontagne.

THE COURT: All right. Thank you. Yes, so, Mr. Rancourt, I'll hear from you.

MR. RANCOURT: Yes.

25 THE COURT: So the issue today is not the mediation, *per sé*. The issue today is, you understand, is whether or not these questions have to be answered. All right.

30 MR. RANCOURT: Uumm - I understand what you're saying, Master. I did want to argue that the original motion that is the basis for this, what I would call a "campaign", is not tenable at law, and I do - I have prepared arguments to that effect. I think that it's *prima facie* evident

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that the motion is not tenable at law, and it's also moot. There's clear evidence to that effect, so I would like to present my arguments in that regard as a first step.

THE COURT: What do you say to that, Mr. Dearden?

MR. DEARDEN: I completely object to that. It is exactly as you said, Master. The issue in this motion is whether the answers should be given to the refusals of - on a cross-examination of affidavits. The merits...

THE COURT: Is there a return date for the main motion?

MR. DEARDEN: Well, interesting on that one, Master. It was returnable tomorrow.

THE COURT: Right.

MR. DEARDEN: I asked - and so I'm going to be making more submissions to Superior Court Justice tomorrow - I asked Mr. Rancourt if he would consent to adjourn the mandatory mediation motion from tomorrow because we're before you today and he refused.

THE COURT: Right. All right, so I think that the issue of whether the motion is - itself, is well founded - is that is in opposition to the motion itself, and if you're correct, then the motion would be dismissed and that can be argued at the return of the motion but you've tendered evidence in opposition to the motion and the issue before me today is having to do with the cross-examination on that. So you could have, presumably in response to the motion, simply taken the position that the motion should be dismissed

5 because - whatever arguments you're going to make about that. But the issue before me on the motion today is not the main motion itself but the requirement to answer the questions put to you on cross-examination.

MR. RANCOURT: Yes, Master. I am self represented...

THE COURT: Yes.

10 MR. RANCOURT: ...and I did present evidence, but my understanding of the case and of the law is evolving and it is clear to me now that there are strong arguments...

COURT REPORTER: Sorry - I'm not picking him up.

15 MR. RANCOURT: Is there something wrong with the mic then?

COURT REPORTER: No, it's just...

MR. RANCOURT: Am I not speaking loudly enough?

THE COURT: Oh - no, you're certainly speaking loudly enough. It may be with...

20 THE COURT: Just speak into the direction of the microphone.

MR. RANCOURT: Okay. I need to speak to the microphone?

COURT REPORTER: Yes, thank you.

25 THE COURT: Just - probably don't touch the microphone

COURT REPORTER: Thank you.

MR. RANCOURT: Yes, now where was I?

COURT REPORTER: Sorry.

30 MR. RANCOURT: So I believe - I would like to make my arguments about the untenability, the mootness and the fact that the original Motion actually

contravenes the rules of procedure. I think that these points are *prima facie* evident if I can simply present them, and that is my position today, my understanding of the case and this conflict that is evolving from a legal perspective as we develop. It's - if I were to do it again today, I maybe would not have presented the same evidence, but I feel that it's now clear that the original motion is simply not tenable and I would like to have an opportunity to make that argument to the Court.

THE COURT: You will have. You have the opportunity to make that tomorrow when you appear in front of the judge on the motion, and Mr. Dearden presumably will ask that it be adjourned pending what I rule here - pending these answers and you will, presumably, will argue that it should not be adjourned, in fact, it should be dismissed instantly because there's no basis for such a motion. And so that's the argument for tomorrow. And if, presumably, if you're successful and that and the motion is dismissed, then there would be - there might not be the need to answer any questions that I ordered answered today, if I make such an order. I haven't got to that stage yet.

But the issue before me today is a much narrower one and that is that in response to the cross-examination on the affidavits that you tendered as evidence, are these relevant questions and proper question that must be answered? And that's all I'm dealing with today, so you've got a

date tomorrow for the main motion...

MR. RANCOURT: Yes.

THE COURT: ...and so I'm not going to hear that today.

MR. RANCOURT: Yes, my - just as a response, I'd like to say that my understanding was that if there was an easy way to save a lot of expense, and to lead more directly to a just resolution of motions and of the process, that it was advisable to go in that direction. It's in that sense that I was putting forward - that I would like to make those arguments today.

THE COURT: Right. Well, I'm not going to hear those arguments today. You can make them tomorrow. But I will make note of the fact that you've raised that overall objection and I will then leave it the judge hearing the matter whether that affects any order I make today.

MR. RANCOURT: Okay. Thank you.

THE COURT: So I want to deal with the questions that were reviewed and the undertakings that were given and...

MR. RANCOURT: Yes, thank you, Master MacLeod.

So, I'd like to start with just a few managing questions - administrative questions. There are three errors in my factum that I would like to just point out - typographical type errors, but that change the meaning - if I could just point those out quickly.

In paragraph 18, of my factum it should be "Defendant" believes, not "Plaintiff" believes. In paragraph 28 it should be "the latter case

law", not "the later case law."

And in paragraph 40 my factum "with" should be "without", and I think it should be obvious from the context of those paragraphs where those errors are occurring.

Also I have - at the time that I prepared my factum, I indicated what I would put in the refusals charts clearly as such, but I didn't have time at the time to actually fill in the refusals charts but I have done that since. So I have refusal charts that are now complete - my column - and I would like to provide those right now. There's one for the cross-examination of my affiant and there is another for the cross-examination of me.

THE COURT: Okay. Thank you.

MR. RANCOURT: There is also some case law that I mentioned in my factum. I did put a book of authorities in for a particular case that I felt would not necessarily be easy to find. I couldn't find it in CanLII, but the others were available in CanLII, so I didn't put them in at the time but I have brought copies today - let me just locate that - that's the Rothmans one - where did I put it? One second.

MR. DEARDEN: The Master does have Rothmans. I handed it up.

MR. RANCOURT: Yes, Rothmans we have, but there was another one that I wanted to give, which must be on the table here somewhere. Well the one I wanted to hand out today was this

Canadian National Railway Company v. Google

Incorporated, 2010. The CanLII number is 3121 and I can't find my copies which I'm sure I made, at this time.

THE COURT: Sorry. CNN versus Google?

MR. RANCOURT: Yes. I'm sure I brought those. Okay, so that was one thing that I wanted to do.

And I also wanted to ask a procedural question, Master. I was under the assumption, and I may be wrong, that the public record of this case a whole - meaning the Statement of Claim, the Statement of Defence and so on, were things that were accessible to any given motion, that one could refer to them, that the judge could look at it and consider it, and so on...

THE COURT: Well it depends what you're asking, but if there are materials in the main Court File that you want to refer to on the motion, you have to do something to get them here, because I don't get the Court File. I get the Motion Record.

MR. RANCOURT: Yes.

THE COURT: But you can, of course, refer to affidavits previously filed. You can refer to the pleadings and so on. I have the pleadings because Mr. Dearden's given me a Pleadings Brief so that I understand what the action's about. If you wished to refer to an affidavit that you had filed previously as opposed to filing it again, then you would normally would have had to arrange to have the court staff send that to me, because normally they just send the motion material.

MR. RANCOURT: Okay.

THE COURT: I don't get the whole Court File, for

5 obvious reasons, and so - and you would normally identify in your motion material what it was you were going to rely on. So it's not necessary to re-file things that are already filed. But if they're not in a Motion Record, then you have to do something to get - physically get them up here...

MR. RANCOURT: Yes.

10 THE COURT: ...and that involves going to the counter...

15 MR. RANCOURT: Yes. I did make mention of all the items that I wish to use in my Motion Record, and I also stated - I think that I was assuming that the Statement of Defence and Statement of Claim and so on, were accessible in that way. I made those Statements but I wasn't sure that would be the case.

20 Okay. Now, I really wish I could stand up. It's very unfortunate that I just feel more comfortable - how's that?

COURT REPORTER: Just one second - you can if I can get the other microphone over.

MR. RANCOURT: Okay.

25 THE COURT: That's fine. Just take a moment and we'll arrange that.

MR. RANCOURT: Thank you. Thank you.

THE COURT: So if it assists you, I've pulled up the Canadian National and Google case...

MR. RANCOURT: M'hmm.

30 THE COURT: ...on my screen, so I have it available to me.

THE COURT: Okay. I'm not sure - well, good.

Thank you.

5 All right. Well let me start by making some broad statements about my understanding of the case law that is most relevant to the question of these refusals. My friend, Mr. Dearden, has referred to a case which is the Rothmans case. I'll simply refer to it as "Rothmans"...

THE COURT: Yes.

10 MR. RANCOURT: ...and I also believe that is the central case that is relevant to us here today.

THE COURT: That's Justice Perell's decision.

MR. RANCOURT: Uumm - I would need to - yes, that's right.

THE COURT: It's one of the most recent.

15 MR. RANCOURT: Yes, it's the most recent, but it's also the most complete. The justice, actually explicitly said it's...

THE COURT: It's certainly one of the longest.

20 MR. RANCOURT: ...there are 187 paragraphs and he said he'd reviewed all of the case law and so on.

THE COURT: Yes.

25 MR. RANCOURT: ...and the - I want to point out that the bullets that Mr. Dearden was pointing the Master to during the introduction, are actually not points that the Ruling was making, but are bullets of summary of the case law that was reviewed.

THE COURT: That's...

30 MR. RANCOURT: So it's important to distinguish those bullets of the various different things. Some of them are contradictory and so on, that have been made in the case law...

5 THE COURT: Mr. Rancourt, I don't think there's any dispute about what the law is on what's relevant on cross-examination on a motion. There is sometimes room for argument about that, but I don't think that Justice Perell says anything different on that point than I said in Caputo.

MR. RANCOURT: I totally agree.

10 THE COURT: And I summarized that in four very simple points - or I tried to.

MR. RANCOURT: M'hmm. I totally agree, Master. That's not where I was going with this.

THE COURT: Okay.

15 MR. RANCOURT: Uumm - where I was going is that the conclusion of - looking at all of this case law and the point about relevance is not challenged and - but the conclusion was that the goal of this - what I would consider a landmark decision about what is answerable on cross-examination of an affidavit in a motion - the
20 Ruling explicitly says that this is very different from other kinds of examinations, and must be treated in a special way. And the conclusion of all those bullets of review of the case law is paragraph 144, and it's at tab four of Mr. Dearden's Plaintiff's compendium of argument, and
25 it's on page 32 there of the Ruling. But paragraph 144 is a kind of conclusion because the Justice says:

30 "There are some subtle points about these principles that are worth noting. First, although the case law establishes that a cross-examination question must be fair, the

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5 nature of fairness is not explained in the case law. This principle would appear to be the source of the Court's jurisdiction to stop abusive questioning and questioning designed to discomfort a witness but having little probative value."

and then he says - the Justice says in the Ruling:

10 "In my opinion, the fairness principle would also provide the Court with the jurisdiction to stop a party from using a cross-examination in a way that disturbed the fairness of the procedure or the fairness..."

and this is the important point that I want to stress,

15 "...or the fairness of the adversary system under which justice is administered in Ontario."

20 And then the Justice goes on to explain later in the Ruling that the adversary system is one where the parties are entitled to make the arguments what they want - to select the evidence that they want to put forward at different stages of the process. And in this Ruling the Justice ruled on many, many questions that were clearly relevant - where the relevance was not challenged - that the questions did not need to be answered. There were 25 99 questions at stake in this Ruling and he ruled that all of them did not need to be answered, even though they were - the great majority were clearly relevant, they did not need to be answered because they amounted to premature discovery attempts.

30 And the - I should pull out the Ruling here to get

the wording precisely...

THE COURT: Again, I don't think that's controversial.

MR. RANCOURT: Okay.

THE COURT: The starting point is relevant - if it's relevant and it's a proper question, then the question is "Is there some reason you should not be required to answer it?"

MR. RANCOURT: Yes.

THE COURT: And one reason might be that it's abusive. Another reason might be that it's disproportioned - which is the new test that's being asserted into the Rule - or that it's extravagantly expensive or difficult or would impose some sort of hardship.

MR. RANCOURT: Yes.

THE COURT: Or it would just be unfair. And those are all reasons why the Court might not compel a relevant question to be answered, and...

MR. RANCOURT: Yes, Master, I would agree with you except that I would add that this Rothman decision goes a step further and makes a new point for the first time, which is the point that it cannot be premature discovery because that speaks to fairness, and that fairness is interpreted for the first time to mean here that it is contrary to the adversarial system where one is entitled to present evidence that one chooses at different stages of the process. And this was the basis that the - that the judge used to overturn a Master's decision on 99 questions, and decide that none of these questions were to be answered

because they were too broad and constituted a form of Discovery.

And I'd like to point out, Master MacLeod, that this - actually this decision - this new point that's brought into the case law just this year - the Rothman decision - is actually consistent with a rule of procedure which is Rule - I mean, you can see this in the Rules of Procedure themselves - Rule 39.042 is a Rule that I can read to here and it says:

"On the hearing of a motion, a party may not use in evidence the party's own Examination for Discovery or the Examination for Discovery of any person examined on behalf or in place of or in addition to the party unless the other parties consent."

So the Rules already include this idea that when you're hearing a motion - especially a procedural motion, and this is a procedural motion - it is not a motion to the heart of the matter when you're hearing a procedural motion, you're not entitled to use evidence from Discovery. So that indicates that...

THE COURT: No, that's not what that says. It says you cannot use your own...

MR. RANCOURT: Yes, your own - your own.

THE COURT: You can certainly use the other party's. Right? What you can't do is give an answer on Discovery and then use that as evidence in a motion. Right?

MR. RANCOURT: Right.

THE COURT: So you can certainly use the other

person's Discovery. That's the...

MR. RANCOURT: The other...

THE COURT: If you read the Rule. It says...

MR. RANCOURT: Right.

THE COURT: ...use your own Discovery.

MR. RANCOURT: You mean when you're discovering things when you're asking the questions?

THE COURT: No, no, no. If Mr. Dearden examines you...

MR. RANCOURT: Oh - okay.

THE COURT: ...for Discovery and you give an answer...

MR. RANCOURT: Okay.

THE COURT: ...you can't bring a motion and say "See, that proves it."

MR. RANCOURT: Okay.

THE COURT: Right? That's...

MR. RANCOURT: Right.

THE COURT: ...what that means.

MR. RANCOURT: Okay, well then I'm sorry. I misunderstood that Rule. I will retract that argument.

THE COURT: But I take your point...

MR. RANCOURT: Yes.

THE COURT: ...but the point is this, that Justice Perell is making is I don't think it's as novel as you're suggesting. He's simply saying that we're not in the business of requiring people to answer questions just for the sake of answering questions. There has to be a purpose to it and the purpose has to be that it's germane to the motion...

MR. RANCOURT: Yes.

THE COURT: ...as opposed to an abuse of process in trying to compel answers to be produced at a time when they're not needed.

MR. RANCOURT: Yes. Master MacLeod, this is part of the reason that I wanted to make my arguments about the original motion, is that I wanted to speak to the heart of what the original motion was in order to show that these questions are not relevant to this procedural motion.

So I will do a bit of that now...

THE COURT: Well before we go further with sort of sweeping pronouncements about this...

MR. RANCOURT: Yes.

THE COURT: ...I don't think that - I think you can take it that I'm familiar with the case law and familiar with the nuances of the case law because I deal with this all the time, so - and I'll certainly hear any specific arguments you want to make on specific points, but there are really - we have three categories that Mr. Dearden has outlined. The first has to do with the evidence that you tendered of Mr. Lamontagne, and Mr. Lamontagne makes - first of all gave some undertakings, and you can argue about whether they were or weren't undertakings, but the question is why shouldn't he answer those undertakings? And the second part is the set of refusals that he gave - or that you gave on his behalf - or you gave that relate to his capacity to be used as an expert, because Mr. Dearden says you are submitting his affidavit as expert evidence, and

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5 there are a whole series of tests that are engaged as to whether the Court will admit opinion evidence or not, and if you are asking the Court - or maybe asking the Court to do that if the motion survives, then I have to deal with whether those are proper questions, having to do with Mr. Lamontagne. So that's the first group.

10 The second is a group that relates to your income and assets and that - as Mr. Dearden has pointed out with his responding to your evidence that you've put in your own affidavit, that you are not able to afford the mediation that he's proposing. And flowing from that he also has questions about the Law Help Ontario application.

15 And finally, we have these two questions relating to insurance coverage...

MR. RANCOURT: Okay, so I will...

THE COURT: ...and so those are all...

MR. RANCOURT: Yes.

20 THE COURT: Those are all different and, again, it goes to the fact that - apart from the insurance coverage issue - you've - actually, the insurance coverage issue is again, related to the question of whether you have access to funds to fund your defence and therefore fund the mediation.

25 MR. RANCOURT: Yes, I understand what Mr. Dearden was advancing and...

THE COURT: Yes.

MR. RANCOURT: ...and thank you for...

30 THE COURT: But those are the categories of questions...

MR. RANCOURT: Yes, I understand.

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THE COURT: ...and so...

MR. RANCOURT: And so I would...

THE COURT: ...they're different...

MR. RANCOURT: ...like to address...

THE COURT: They're not all the same.

MR. RANCOURT: ...each one.

THE COURT: Good.

MR. RANCOURT: I'd like to address each one.

So in my factum, I'm looking at page 215 of my Motion Record, and I go through and answer - or at least argue against each of these points.

The first point is the first refusal on my part, which is a request for all records of communications with the expert witness - absolutely everything.

THE COURT: M'hmm.

MR. RANCOURT: And the Defendant - I first want to say that I protested these questions many times in the - you can see that in the transcript of the cross-examination. The Defendant, Doctor Lamontagne, volunteered quite extensive evidence that is - that speaks to the question of his independence. These - this evidence is given in transcript paragraphs 29; 35 to 36; 38 to 39; 43; 50 to 57; 59 to 62. These are the transcripts of - no, those are the transcript paragraphs for my cross-examination and then the transcript paragraphs for the cross-examination of Doctor Lamontagne were as follows: 18 to 26, 29 - now here it's important at paragraph 29 - or to point out that there is an error in the transcript. I have put that in my affidavit evidence for the

instant motion - there is a significant error where the opposite was recorded than was actually said. I have heard the recording myself in the presence of the Court Reporter who agreed, and there was an objection by Mr. Dearden to correct it immediately in order to give him time to hear the recording himself. But I have sworn in affidavit to these points. So that's point 29.

THE COURT: Sorry - what point?

MR. RANCOURT: So this is paragraph 29 of the transcript of cross-examination of Mr. Lamontagne.

THE COURT: Right.

MR. RANCOURT: And in my affidavit, I have in Exhibit I - I have an email to the Court Reporter where I explained this error.

But this is - I'm not sure this error is relevant to today's question, but it's just - just wanted to point out there is a significant error there in the transcript.

THE COURT: Sorry, in tab I?

MR. RANCOURT: All right, so - no, it's Exhibit I of my affidavit, so that would be in my Record Motion for the instant motion.

THE COURT: I've got that.

MR. RANCOURT: Sorry?

THE COURT: I've got that.

MR. RANCOURT: Yes. Sorry, so...

THE COURT: Sorry. I have it here - yes. Okay. Okay, so "I"...

MR. RANCOURT: "I" - and so in there there's an email...

THE COURT: Yes.

5
MR. RANCOURT: ...to the Court Reporter in which I say "The most important error occurs in the transcript of the cross-examination of Doctor Claude Lamontagne at page nine, paragraph 29, line three. Here "I think I receive instructions from him" should be "I didn't receive any instructions from him". So I'm simply correcting the transcript record there through that affidavit evidence.

10
THE COURT: Okay.

15
MR. RANCOURT: So I was in the middle - that was just a parenthesis to talk about - I was in the middle of describing the paragraphs in the transcripts of the cross- examinations in which detailed, extensive information about independence of the expert witness is being talked about. And so I mentioned that in the cross-examination of Doctor Lamontagne, we had paragraphs 18 to 26; 29 - which I just said there was an error in - and then paragraphs 30 to 32, and 34 to 44, and then 20
47 to 48, so extensive answers have been given that speak to the question of independence. I believe they are largely sufficient answers for the purpose of testing the affidavit and for the purpose of the original motion. To ask for every 25
communication between the affiant and myself, I believe is too broad and is move - is crossing the line into premature Discovery.

30
THE COURT: Sorry. Let me just try to understand that. How can that be so? Mr. Lamontagne is not going to be an expert in the action. His only - well maybe he is, but his expertise that's being

challenged at the moment is for the purpose of the motion to be argued tomorrow.

MR. RANCOURT: Yes.

THE COURT: And so he would not be being discovered. He is being cross-examined on that affidavit, and you are being cross-examined on that.

MR. RANCOURT: Yes. Uumm - I'm saying that the question of his independence has been...

THE COURT: But that - the question of his independence is going to be critical to the judge who decides whether or not to accept his evidence - his opinion evidence on the motion, not in the action - on the motion.

MR. RANCOURT: Well tomorrow I'll argue that that's not the case...

THE COURT: M'hmm.

MR. RANCOURT: ...but because I'm arguing that the motion - the original motion itself is not tenable. But...

THE COURT: Sure, and if the motion gets thrown out then I'll never look at any of the evidence, but...

MR. RANCOURT: Right. Right. But...

THE COURT: Assuming the judge does that before he hears the full argument which the judge may reserve that question...

MR. RANCOURT: Yes.

THE COURT: ...hear the motion and then the judge will have to deal with the admissibility of Mr. Lamontagne's evidence.

MR. RANCOURT: Yes, but...

THE COURT: So this goes to...

MR. RANCOURT: ...Master MacLeod...

THE COURT: ...the admissibility of expert evidence, that's what this is about.

MR. RANCOURT: Yes. What I was trying to explain, is that the central question in this first refusal is about the independence of the witness. And all I'm saying is that the witness and I have provided extensive evidence - sworn evidence to - that speaks directly to the question of independence of the witness. And that is complete in terms of the Plaintiff arguing whether or not this witness is independent. That's what I'm saying. The evidence has already been given. There is no need to have a broad Discovery process that goes and gets every document and asks about every communication. And so I feel that I didn't put those communications in the process up to this point and that we're entitled to not show them until Discovery. I believe that's what the Rothman decision is about. That's what I'm saying...

THE COURT: Okay.

MR. RANCOURT: ...Master MacLeod.

MR. DEARDEN: MacLeod.

MR. RANCOURT: Oh - MacLeod. I was corrected on the pronunciation of your name. I'm sorry.

THE COURT: Thank you.

MR. RANCOURT: So an order to disclose at this stage of the process would prejudice the case by allowing independence of a key expert witness to be too broadly probed in a procedural motion -

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that's the original motion - without the benefits and protections of completed Discovery and trial. The refusal and the independence question have no bearing also on the fatal legal flaws of the original motion. That's for tomorrow.

The second question - did expert witness provide third party letters to the Defendant in a separate matter? That's how I would characterize the second refusal. Here the relevancy has not been established, and in the alternative, it's an unfair question in terms of premature Discovery requests. That is my submission.

The Defendant's affiant has stated that he was a supporter in the dismissal case of the Defendant and that he collected letters of support. There is no apparent, or Plaintiff presented mechanism whereby this question is relevant to the original motion, to the Defendant's affidavits on the original motion or even to the question of expert witness independence. The question is not probative because it does not further or significantly increase or decrease the probability of the truth about the expert witness independence.

The fact - whether or not in a separate matter, the expert witness who is a supporter of - in another matter - provided letters of third persons to me, it's just so tenuous and removed that I see no relevance here and there has been no mechanism or example of how that would work and how that would relate and how that would make this question probative. So I submit that the

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relevancy has not been established in this question.

And in the alternative, if the question is judged to be relevant then, again, an order to disclose at this stage in the process would prejudice the case by allowing independence of a key expert witness to be too broadly probed in a procedural motion without the benefits and protection of completed Discovery and trial. The refusal and the independence - well, no - that's for tomorrow;

Next I would like to address refusals three to nine which all relate to financial or property assets of the Defendant. Here again, I submit that this is an unfair question because it is a premature Discovery request in a procedural motion - the original motion. So the Defendant has affirmed both in affidavit and at cross-examination that he has no income or salary of any kind. That's already in evidence. The Defendant has been unemployed since April of 2009. The Defendant is self represented in the instant motion. The Defendant has affirmed that he was duly accepted in the Law Help Ontario program for free legal help and free mediation. The Defendant has affirmed - in affidavit "I cannot financially afford such high fees as a basis for initiating a mediation process." You have - here I want to point out that the original motion is asking that the Plaintiff's selected mediator be imposed without the Defendant's consent on the Defendant. That's one key request in the original motion.

5 And that mediator happens to be very expensive compared to roster list mediators. I think it's two or three times the cost. That's the background for that. So I had stated that I could not afford initiating any mediation process on this basis and that is - and I refer to the evidence - I'm actually following my factum quite closely here...

THE COURT: Yes.

10 MR. RANCOURT: ...I'm on - Okay. Now, in the factum I explain that a relevant dictionary definition - regarding this question - and I got this from the online free dictionary of the word "afford" - "to afford something" is as follows: "Afford: preceded by can or could, et cetera - to be able, to do, or spare something, especially without incurring financial difficulties or without risk of undesirable consequences".

20 Now if you accept that definition which is a common one and a reasonable one, the Defendant, I submit, is the best assessor of what constitutes "undesirable consequences" to him and of what he can afford "as a basis for initiating a mediation process" in his active quest for re-employment. So I think the question "afford" is not a question of "what are your assets?" but it's a question of can you, as the evaluator of your own risk and the harm that you might suffer, or the undesirable consequences - that is what the term "afford" means and that is precisely how I was using it in my affidavit. So the financial or property assets

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questions have effectively no legal value in the original Motion, are conspicuously premature Discovery questions, I submit, and have no bearing on the flaws in the original motion.

Regarding - I'm just going to take a sip of water here - regarding refusals 10 to 13 - the refusals of the Defendant. This is for all information and documents about the Law Help Ontario application.

THE COURT: Yes.

MR. RANCOURT: This is an unfair question in that it constitutes premature Discovery request and it's also an impeachment of the deponent's character, I would argue, as follows:

the Plaintiff's claimed relevance of the questions about Law Help Ontario application is - oh - let me just recapture that thought, I'm sorry. So the Defendant has affirmed that his Law Help Ontario application was duly and completely filled and that his application was authoritatively accepted - original motion affidavit of August 26th, 2011 in cross-examination affirmations. It's in both places. So the Defendant has affirmed this - has sworn to it. The Defendant has disclosed his mediation assistance project and pro bono Law Ontario application for free mediation - original motion affidavit, August 26th, Exhibit B (B). Law Help Ontario has a strict policy to only allow the application for free mediation to individuals who qualify and who have been approved for Law Help Ontario legal help. This policy of Law Help Ontario is readily verifiable by any member of the

5 public. Therefore, the status with Law Help Ontario is established. Likewise, the application form for Law Help Ontario is publicly available and is detailed. The Defendant has affirmed at cross-examination that he co-owns a residential property - paragraphs 90 to 92 in the cross-examination transcript. The Plaintiff's Law Help Ontario questions - which are not relevant to the original procedural motion, improperly extend to a cross-examination to impeach the character of the deponent - paragraph 143, 9th bullet, Rothmans is the case law that I am using in saying that.

10 An order to disclose the Law Help application at this stage in the action would prejudice the case by providing detailed, premature Discovery on a procedural motion - the original motion - without the benefits and protections of a Discovery process which is meant to be equitably applied to both parties.

15 The Plaintiff's Law Help Ontario questions have effectively no legal value in the original motion, are conspicuously premature Discovery questions and have no bearing on the flaws - on the fatal legal flaws of the original motion. So that was speaking to refusals 10 to 13, Master MacLeod.

20 THE COURT: Right.

MR. RANCOURT: I am moving on to refusal number 14, which is the question of the Curry Insurance liability coverage.

25 THE COURT: Right.

30 MR. RANCOURT: This is an unfair question because

5 it is a premature Discovery request. The
Defendant has affirmed that he believes, based on
facts that he is entitled to be covered by the
University's Curry Liability Insurance Policy and
that he is actively pursuing the matter and that
not having an imposed, immediate mandatory
mediation, would increase the likelihood of the
matter - or the required Curry attendance at
mediation - following the rules of procedure -
10 being resolved before the regular usual mandatory
mediation - that, by the way, I am not refusing
mandatory mediation. That was a
mischaracterization of the situation.

THE COURT: No, I understand...

15 MR. RANCOURT: Okay.

THE COURT: ...you're refusing to go to mediation
with Justice Chadwick as is proposed.

MR. RANCOURT: Actually, Master MacLeod, it's more
than that. The original motion is to force
20 immediate mandatory mediation before the usual -
long before the usual 180 day deadline that - so
it's not just about selection of the mediator,
it's about...

THE COURT: The timing - I understand.

25 MR. RANCOURT: ...the timing as well.

THE COURT: Yes.

MR. RANCOURT: All right, so - so I've affirmed
that it is possible that the Curry question be
resolved before we get to the normal, regular,
30 forseen by the rules mandatory mediation. The
Defendant has stated also in his factum on the
original motion - and that's at paragraph 43 and

5 that's where I'm referring to the - to the
material from the original motion which I brought
a copy here if you need one, I believe I have a
copy of it - that based on the Rules of Procedure,
the Defendant expected to have more time to
resolve this difficulty before mandatory mediation
would be imposed. The Defendant expects to make
an action and/or motion in this matter of
liability insurance. So I've already stated what
10 my position is. But it's not in an affidavit.
It's in a factum. And I pointed this out in
cross-examination that it was in the factum.

15 The Plaintiff's questions about Curry are a
departure from the adversarial system into an
inquisitional system of adjudication, requiring an
affirmed answer of intent - one that is affirmed
under oath of intent regarding the future is
dubious in any examination. The answer depends on
resources and future and evolving circumstances,
20 all prerogatives under our adversarial system of
justice. So I'm saying that I should not have to
answer a question about my intent to - in other
words, under oath to answer about my intent to sue
or put forward a motion and so on. I've already
25 said that I will prepare - I'm going to be putting
that forth in my arguments if I need to, but
there's no reason why I should have to swear to
it. So the Plaintiff's Curry cross-examination
questions about the Defendant's intent, have no
30 legal basis in the original motion, are
conspicuously unfair and have no bearing on the
fatal legal flaws of the original motion.

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I'm - I believe I'm moving on now to refusal number 15...

THE COURT: Yes.

MR. RANCOURT: ...which is the last one in my refusals chart for the Defendant.

So this relates to the Home Owners Insurance Company and I'm arguing that the relevancy has not been established and that it's an unfair question - that it's a premature Discovery request.

The question - question 15, about the Defendant's home insurance, was not a matter in the Defendant's affidavits, nor did it arise from the Defendant's answers in cross-examination. It arose from a third party - Curry - passing comment in an affidavit exhibit. It is not relevant. If the Defendant tried to introduce the home insurance matter into the hearing of the original motion, the Plaintiff would be justified in objecting and the Honourable Court would have the discretion to refuse the new and not previously submitted evidence.

The Plaintiff's question about home insurance is a departure from the adversarial system into an inquisitional system of adjudication. It is the prerogative of the Defendant under our adversarial system of justice to not introduce this (irrelevant) matter. The question "Did you report the libel action to your personal home owner's insurance company?" is premised on the Defendant owning a home - which itself was not a proper cross-examination question, I submit, on the affidavit of the original motion. In order to

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answer the question "Did you report the libel action to your personal home owner's insurance company?" would inevitably lead to more questions, thereby amplifying the impropriety of the first question, further harming procedural fairness.

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The Plaintiff's question about home insurance has no legal value in the original motion. It's not relevant, did not properly arise, is a premature Discovery question and will lead to amplification of procedural unfairness. That's what I would submit on that point.

15
So the main point - I think one of the main points about question 15 was that this only arose from a third party comment in an exhibit. That's the only way that it came up. It's not something that I chose to put into evidence, in the sense that one would have to block part of the email or something.

20
THE COURT: Right.

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MR. RANCOURT: Now we're moving on to - I've concluded my responses, although I give more arguments in detail in the factum itself - but I've concluded my responses - point-by-point responses regarding my refusals and I was going to move on now to the refusals and so-called undertakings of Doctor Claude Lamontagne.

THE COURT: Yes - okay.

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MR. RANCOURT: The first point is a refusal. It's the one refusal, and it's this question of all records or exchanges with Mr. Rancourt.

Basically, I present - I would present the same legal argument that was - that related to my own

5 refusal of the same question. And the legal argument is as follows: we have already given extensive, on the record, affirmed evidence that speaks quite extensively to the question of independence of Doctor Lamontagne.

THE COURT: But that's what cross-examination is about - challenging the evidence. Right? That's what cross-examination is for.

10 MR. RANCOURT: No, these were answers to cross-examination questions. We answered several questions.

THE COURT: I understand that.

MR. RANCOURT: Yes.

15 THE COURT: But why - and I understand your submission that it's too broad to ask for all communication with the expert, but why, at a minimum, would they not be entitled to see previous versions of the affidavit?

20 MR. RANCOURT: I - I - I feel that when you start getting documents on an examination of an affidavit on a procedural motion, that where you're actually extracting suites of documents, that that in itself is a flag where one knows that you're probably crossing over into a premature
25 Discovery request. I mean, if you're already getting answers on the record - the whole idea of a motion is that evidence can be provided by affidavit, and...

THE COURT: And by cross-examination.

30 MR. RANCOURT: And by cross-examination - yes, but my understanding of the cross-examination of the affidavit - which I believe is consistent with the

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Rothman decision, is that the intent is to test the statements and the underlying assumptions of the affidavit, not use it as a vehicle to start extracting documents which, in any case, are going to come out of Discovery as Mr. Dearden has already explained. So it's premature Discovery because there are things that will come out in due time that are not needed in this procedural motion and where the answers have already been given in cross-examination. They're - if one looks at the answers, the - Doctor Lamontagne is very straightforward and - on the question of his relationship with me, the extent of communications we had, what questions I - how I asked him to provide an expert opinion. He's very straightforward on all of these points and it's put into evidence already. The Plaintiff has everything they need to challenge the independence of this witness. There is no reason to start digging and getting documents prematurely. That's my point.

And I've cited the paragraphs previously for my case but I can re-cite them. We're talking about paragraphs in the - and in my Motion Record I gave the complete transcripts, so we're talking about paragraphs 30; 32 to 34; 63; 76; 78 to 79 in the Rancourt cross-examination, and we're talking about paragraphs 28, 29 - which has an error that I've already signalled - an error in the transcript - 33 and 45 in the Lamontagne cross-examination transcript. Sorry, those paragraphs I just gave you were the places where I protested

5 that this question was too broad. I'm sorry.
That's a mistake. The paragraphs that relate to
the actual content and question of independence of
the witness are paragraphs 29; 35 to 36; 38 to 39;
43; 50 to 57 and 59 to 62 of the Rancourt
transcript of cross-examination, and then 18 to
26; 29 where there's an error in the transcript;
30 to 32; 34 to 44; 47 to 48 of the Lamontagne
transcript of examination. So there was extensive
10 affirmed evidence given that speaks directly to
the question of independence. There is no need to
go digging for records in a premature Discovery
fashion.

THE COURT: Yes?

15 MR. RANCOURT: I want to move on to the so-called
undertakings, and as you've pointed out, Master
MacLeod, one can argue whether these were
undertakings. I have argued in my affidavit and
in my factum that these were not undertakings and
20 this should be quite clear from the transcript
that they were not undertakings. The affiant did
not have a lawyer present. The Defendant is self-
represented. There were no lawyers on our side.
In addition, if one looks at the full transcript
25 of the cross-examination of Doctor Lamontagne, it
is clear that we concluded the transcript with
this question of undertakings.

30 And I want to now move to - I have it here -
yes - I want to move to my affidavit regarding the
instant motion and this is an affidavit that was
affirmed - oh - I don't have the date here but
recently. It's in the Motion Record and it's for

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the instant motion. Uumm - and if we go to paragraph 34 of this affidavit, I put it this way in affidavit form: "Plaintiff's counsel, Mr. Dearden, is insisting that my affiant, Doctor Lamontagne, is bound to "undertakings" made at cross-examination". For example, see Exhibit "E" of the affidavit and above. This is contrary to how we concluded the cross-examination regarding all the questions with the following statement: and this was a statement made at the end of all of these questions and there had been objections about whether or not we needed to answer and make undertakings - all the way through, but in addition we concluded in this way - and this is in Exhibit "C" - the full transcript of the affidavit, and I'm taking a paragraph out and it's Question 160 of the cross-examination of Doctor Lamontagne and Mr. Dearden is saying,

"As I said, Doctor Lamontagne, when I get the information that I have asked you for, I may have other questions for you in cross-examination. So you may be back here one more time. Any idea when you can get me this information?"

And then I speak - and Mr. Rancourt says:

"I'd like to point out that I think we have an understanding that we are going to be examining whether the affiant must provide you with that information."

And then the witness, Doctor Lamontagne, says,

"If it turns out I have to, it will be done within a couple of weeks."

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And then Mr. Dearden follows with,

"Well we need it more than a couple of weeks, sir, so could I ask you..."

Then the answer is,

"I thought legal processes took months" and so on. But that was the conclusion. And this followed a long string of objections as to whether documents needed to be provided, and so on, and I've already listed paragraphs of all those objections that were made in both cross-examination affiant (sic).

So in my mind, it's very clear that there were no such undertakings - the word "undertaking" is being misused in this context and under the factual circumstances of these cross-examinations. And certainly, I know from Doctor Lamontagne, that that's his understanding as well and he has authorized me to speak for him today. I have that in writing and I've put it in my affidavit.

Uumm...

MR. DEARDEN: Which I object to, Master.

THE COURT: Well, you may be able to put his position before the Court but you certainly can't give evidence on his behalf. He hasn't filed any affidavits so...

MR. RANCOURT: Okay. That's a technicality which I...

THE COURT: Well it's not a technicality. It's a - it means you can't give me facts that aren't in evidence.

MR. RANCOURT: Yes.

THE COURT: You can tell me that his position is

that he doesn't want to answer the question or he does want to answer the question, and that's it.

MR. RANCOURT: Okay. Yes. I am appreciating these points of law more and more, Master, as we go along.

So with respect to this undertaking - which I disagree is an undertaking - about the dictionary entries, I would like to say the following things: first of all I think it's an unfair question and in the alternative it's also a premature Discovery request. Now it's an unfair question in the usual sense - the pre-Rothmans sense - okay?

So it's the Defendant's affiant, Doctor Claude Lamontagne, contemplated additional post-examination information about dictionary entries in question in the cross-examination. However, the unrepresented affiant - or the unrepresented Defendant, denied all undertakings to disclose or answer in the conclusion of the cross-examination - and this is paragraphs 160 to 161, I believe I read them in from the transcript and also the paragraph 34 in my affidavit which I also read from.

Affiant and expert witness, Doctor Claude Lamontagne, provided an overview and many details at cross-examination about how he arrived at his affidavit definition of "racist communication" using several dictionary entries for "racism", and "racist". So this is paragraphs 51 to 65 of the cross-examination transcript. So here we have the affiant - expert witness, providing again, extensive information, that I would argue was

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beyond the scope of what was - that didn't need to be volunteered, but he's providing it and he's explaining it in some detail how this definition was built and how - and how, as the person who wrote this definition - how he constructed it. Claude Lamontagne, indicated in cross-examination - and now we're going paragraphs 57 and 61 of the cross-examination transcript that he did not make copies of consulted documents or make notes of his work in arriving at the definition in question which he stated that under oath. In addition, he does not recall more details about which online dictionaries were consulted beyond the particulars that he provided at cross-examination.

MR. DEARDEN: So I object to that, Master.

MR. RANCOURT: Yes, I'm reporting...

MR. DEARDEN: So that's evidence.

MR. RANCOURT: Yes, I'm reporting his position and I stated that he had told me that in affidavit.

Now, I note that in affidavits for motions, one is entitled to give evidence about what one believes.

THE COURT: But yet affidavits on the motions are affidavits that are actually before me. That is, your affidavit and the other affidavits that are in the Motion Records...

MR. RANCOURT: Yes.

THE COURT: ...and nothing else. You can't tell me about things that I don't have.

MR. RANCOURT: Right. But that is in my affidavit. That is in my affidavit, Master...

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THE COURT: But whether he wishes to answer or doesn't wish to answer, that's his position.

MR. RANCOURT: Yes.

THE COURT: That's got nothing to do with whether he's required to answer.

MR. RANCOURT: But my affidavit is that I believe when he tells me that he does not have any further memory of what he did. I believe that.

THE COURT: Well that may be, but whether I accepted that or not, but if he were ordered to answer it he could then answer that he has no further - and it would be under oath. And so...

MR. RANCOURT: Yes. I understand.

THE COURT: Let's move on from there.

MR. RANCOURT: But he has stated under oath that he has no physical copy or records. He didn't make any. And so he's being asked to produce things that he would have to create.

THE COURT: But we know that there are drafts...

MR. RANCOURT: No, no...

THE COURT: ...and we know there are emails...

MR. RANCOURT: Master MacLeod, we're not talking about the drafts now. This is a different question. This relates - this question relates to the dictionary entries which is one point of the cross-examination. So this question is to produce...

THE COURT: But that's perfectly - if he wants to answer that he has no idea what dictionaries he looked at. That's a perfectly valid - well it may not be valid, but that will be his evidence. So that's not what he said when he asked the

question.

MR. RANCOURT: I just would like to clarify...

THE COURT: He said "I don't remember" but he said that he could find out.

MR. RANCOURT: Yes.

THE COURT: I'm dealing with what the transcript says. Subject to - I take your point that there may be errors in the transcript, but that's...

MR. RANCOURT: Uumm - if I could just clarify something, Master. The question here - the so-called undertaking is to produce copies of dictionary entries that he would have used. That is the question that we are talking about.

MR. DEARDEN: Master, if you could turn to tab five of the compendium 'cause that's not the case at all. Question 56: I said,

"I'd like you to confirm what dictionaries you've looked at and give me a copy of the answers that you are referring to" and he says "Sure."

That's tab five, Master.

THE COURT: Yes, I have that.

MR. DEARDEN: Question 56. And then Question 66 at tab five:

"But what I don't want you to do is to guess. So what you're gonna provide me as to the dictionaries and a copy of the entry in them. I only want to know what you remember."

Then his paragraphs eight...

THE COURT: He doesn't say "I don't remember." He says "Okay."

MR. DEARDEN: He says "Sure."

THE COURT: So that's what's in evidence.

MR. RANCOURT: Oh - but he says okay but he says in the same transcript, he says "Okay" like you would say "Okay", but he explains that on...

MR. DEARDEN: He said "Sure."

MR. RANCOURT: ...he doesn't remember...

THE COURT: That's not what it says in the transcript. Where does it say that in the transcript? He says...

MR. RANCOURT: Well it's a long transcript...

THE COURT: Well I know, but he says in the "I'd like you to confirm what dictionaries you looked at", "Sure". And then "I don't want you to guess, I want to know what you remember." He says "Okay". So even if the second one isn't an undertaking, the first one seems to be. And in any event, if it's not an undertaking it's a perfectly proper question and he doesn't say "I have no idea." If he said "I have no idea" then that may be an answer that...

MR. RANCOURT: Well...

THE COURT: ...Mr. Dearden would be happy with, but that's not what he said. He said he could.

MR. RANCOURT: Yes, I agree that he said that but, Master MacLeod, he also said other things in that same transcript and if you give me time I will find them - and that's why I included the entire transcript.

THE COURT: Well I don't want to read the entire transcript. What you should have done is to focus my attention in the way that Mr. Dearden did by giving me the extracts.

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MR. RANCOURT: Yes.

THE COURT: I am not going to read the entire transcript.

MR. RANCOURT: No, I'm not asking you to.

THE COURT: And he's not here, so he's not opposing the motion. He didn't show up. He didn't file anything. So I hear - I'm hearing your objections to the motion and I will look at the transcript to see whether it was an undertaking or not because he's your witness, but I am not going to have you argue it as if he's here. He's not.

MR. RANCOURT: Yes.

THE COURT: That's his choice. He's not being prejudiced by this. He's simply being ordered to provide and answer.

MR. RANCOURT: Okay - uumm...

THE COURT: And he's a witness. He's not a party. He's not supposed to be taking sides. He supposed to be giving evidence.

MR. RANCOURT: Master MacLeod, Mr. Dearden just wrote - or read the question, and as part of the question...

THE COURT: Yes.

MR. RANCOURT: ...he is asking for copies of entries.

THE COURT: Yes.

MR. RANCOURT: The affiant has stated - affirmed that he has no copies.

MR. DEARDEN: I object. I object, Master.

THE COURT: Where? Where has he stated that?

MR. RANCOURT: Well let's read the question. I

will pull out the...

THE COURT: No, I just read the question...

MR. RANCOURT: But what...

THE COURT: ...but where does it say that he doesn't have copies?

MR. RANCOURT: Well I heard it being read, so I will pull it out.

THE COURT: I just read it. I have it right here...

MR. RANCOURT: Okay.

THE COURT: And the answer - "Sure" is the answer.

MR. RANCOURT: Oh - you mean, where does he say that he has no copies?

THE COURT: Yeah.

MR. RANCOURT: Oh - I believe I state that.

MR. DEARDEN: You're saying that...

THE COURT: You're saying that...

MR. DEARDEN: ...and it's not admissible.

THE COURT: ...but where does he say it?

MR. RANCOURT: Oh - where does he say it?

THE COURT: And where is it in evidence? You're saying it now but it's not in your affidavit.

MR. RANCOURT: Oh - I see I would need to verify that.

THE COURT: Well it's not a fact before me, and if he's ordered to do it and he then says...

MR. RANCOURT: M'hmm. Yes.

THE COURT: "I don't have any copies" or "I don't remember"...

MR. RANCOURT: I can - if I am given a few minutes I can find in the transcript where he says it and the way he says it is as follows: he says "Well, you know, I didn't make copies. I don't remember

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it, but if you - I could go back and do a Google search again and maybe that would jar my memory and maybe I could..." and so on.

THE COURT: So he doesn't says it's impossible. He doesn't say it can't be done.

MR. RANCOURT: But the point is...

THE COURT: He says he didn't make copies.

MR. RANCOURT: But the point is...

THE COURT: That's not the same thing...

MR. RANCOURT: ...he would have to create copies.

THE COURT: ...as what he says he would do.

MR. DEARDEN: Master, Question 60, he specifically refers - and it's not in my compendium, but Question 60, page 16 of the transcript he specifically refers to "The Oxford, the Cambridge, philosophy things, philosophy dictionaries I checked with." "What's that?" "That's called the Common Free Dictionary - that one." And then there's a free online that he refers to in Question 61. And then in Question 63 he talks of philosophical dictionaries and etymological dictionaries. "Hardcopies" he says "Hardcopies." To hear now he doesn't have any memory of them after he gave me that in cross-examination is nothing short of incredible.

MR. RANCOURT: Well I'd like to respond that that. That is a...

THE COURT: Right.

MR. RANCOURT: ...striking mischaracterization, because in the context of that conversation, hardcopy meant as opposed to electronic, on the internet, on my screen. It was clear that's what

the meaning was. It did not mean that he had made copies of his own dictionaries sitting at home.

THE COURT: He does not say he made copies. That's not what the question says. The question said "What did you look at?" He said "I don't remember. And the question is "I'd like you to confirm what dictionaries you've looked at and give me a copy of the entries you were referring to." It doesn't say he made copies. It says "give me copies". He says "Sure." In other words, "No problem. I will go and do that." And so...

MR. RANCOURT: And then at the end of the transcript.

THE COURT: ...he can do that. And it's implicit that he would have to make a copy. Even if he had his own dictionary he wouldn't cut a page out and bring it in - he would make a copy - right? If he's going to take it online he's going to print it, so...

MR. RANCOURT: Okay.

THE COURT: There's nothing in that evidence that suggests - and this is the key - that it would be an onerous, extravagant, expensive, difficult undertaking for him to do these things. And so he seems to say "Sure." Now, if there's something else in the transcript where he says "it's impossible" but I don't want to be quibbling about whether he's made copies or not made copies - it doesn't matter. The question is "Do you know what you looked at?" and "Give me a copy of it of what you looked at." That's the question. That's the

5
answer. And, you know, that's what we're concerned with. If you're trying to show me that this would be a tremendously intrusive order then, you know, that's something that I can take into account...

MR. RANCOURT: No, my only...

THE COURT: ...but I don't see any evidence of that.

10
MR. RANCOURT: ...my only point was that in doing his work he did not make notes or copies of things that he was looking at on the Internet, and that therefore to request copies now - after the fact - is not a reasonable question. That was my only point.

15
And the - I've located here in my notes the - if the Master wants to re-visit this question, paragraphs 57 and 61 of the cross-examination transcript of the affiant, Claude Lamontagne, is where he talks about where how he would need to recover his steps in order to find these things, and so on.

20
THE COURT: Okay.

MR. RANCOURT: So I just wanted to point that out in case it's of any use.

25
So I feel that in this refusal question, because it, in my submission is it's not an undertaking. The requirements in addition to what was provided at cross-examination exceed even what would be allowed in Examination for Discovery, in that one is asked to create documents - namely to attempt to re-create one's work for which one has no further memory, and find or make copies that
30
one does not have or has never had. That's the

position.

If the Honourable Court finds that is a fair question - or that this was an "undertaking" which must be honoured, then in the alternative, an order at this stage in the process would prejudice the case by allowing the qualifications and, or the independence of the key witness in the action to be too broadly probed in a procedural motion - the original motion without the benefits and protections of completed Discovery and trial. The refusal and the dictionary question have no bearing on the untenable nature of the original motion.

In the second so-called undertaking, the affiant, Doctor Claude Lamontagne, is being asked to provide the names of people on a support committee. My position is that the relevancy is not established, and in the alternative it's an unfair question because it's a premature Discovery question.

The Defendant's affiant, Doctor Claude Lamontagne, contemplated additional post-examination information about the committee in question in paragraph 106 of the cross-examination transcript. However, the unrepresented affiant for the unrepresented Defendant denied all undertakings to disclose or answer in the conclusion of the cross-examination. And so I'm referring us back to the transcript where in conclusion at paragraphs 160 and 161 there is a clear statement that we will not be answering or providing anything until we've had a chance to

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5 think about this and consult. There's a clear statement to that effect at the end of the transcript there are also many interventions to that effect throughout the transcript. At one point I counted 50 refusals of that type in the transcript of my own cross-examination - approximately 50. So there are these objections throughout.

10 It was a high intensity cross-examination.

It was one done under duress, uumm - and...

THE COURT: Where's the evidence of that?

MR. RANCOURT: I think it's in my affidavit.

THE COURT: Where's the evidence of duress?

MR. RANCOURT: I have a whole section in my affidavit.

MR. DEARDEN: Not his affidavit that is subject to the cross-examination. It's the affidavit that he's put in opposing the refusals.

MR. RANCOURT: Yes.

THE COURT: This affidavit?

MR. RANCOURT: Yes.

THE COURT: In this motion?

MR. RANCOURT: Yes, and in that affidavit.

THE COURT: Okay, let me just stop you for a second because normally we have a break between 1:00 and 2:00 and I have let this go on because I was hoping we'd get finished. How much longer do you think you're going to be?

MR. RANCOURT: Allow me to evaluate that.

THE COURT: Absolutely. I don't want you to feel rushed.

MR. RANCOURT: I think, for my part, I could

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probably do it in 10 or 15 minutes - maybe closer to 10 - maybe less than that. I may be over estimating because we're at the last point here.

THE COURT: Well that's what I thought but...

MR. RANCOURT: But there is this new question since you, Master MacLeod, you asked me is there evidence regarding the way in which the cross-examinations were done.

THE COURT: I'm not even sure that's relevant to this motion. I mean, there's no - there's not been any suggestion that the questions asked we're or undertakings were extracted - so we're dealing only with the relevance and the propriety of ordering the questions to be answered with respect to refusals, and you've been speaking to me about why I shouldn't regard these as undertakings, which I think I've heard your arguments on that.

MR. RANCOURT: Master MacLeod, I did provide much evidence under the heading "Absence of Plaintiff's Counsel's Reasonable Diligence" - "Absence of Reasonable Diligence" and I provided in my affidavit for the instant motion paragraphs 24 all the way to - all the way to the end I believe - which is all the way to paragraph 36 - significant evidence that this cross-examination was improper in many regards. It was a high stress situation. It was one that - well I certainly felt under duress and I know my affiant did.

MR. DEARDEN: Objection.

MR. RANCOURT: I believe my affiant did from what he told me.

MR. DEARDEN: Objection.

THE COURT: All right.

MR. RANCOURT: So I present arguments to the fact that this cross-examination was improper. I'd like to present some of that evidence if you want, or I can simply...

THE COURT: I'm just not sure what you want me to do with that.

MR. RANCOURT: Well it's relevant to the question of...

THE COURT: There's been no - there's been no motion to adjourn the cross-examination as improper. I would be amazed if a self-represented litigant up against experienced counsel did not feel ill at ease. I mean, that's the situation you put yourself in when you put in affidavit evidence in and are cross-examined. I have had experience of people being asked the most innocent and casual of questions feeling that they've been grilled and that they are - nobody likes to be challenged and asked questions, but that's what happens in the legal system. You get cross-examined on affidavits. If the case goes to the trial he will be cross-examined in court and I suspect you will be cross-examined far more vigorously than you are on an affidavit. At a cross-examination. That's the nature of a cross-examination.

MR. RANCOURT: Master MacLeod, I have been cross-examined before in litigation. This - and it was a cross-examination that was intended to extract things and so I have some experience in cross-

examination.

5 THE COURT: All of what you're - much of what
you're telling me is opinion. What you have put
in your affidavit is a series of questions from
the transcript and I've read that and, you know,
it doesn't strike me as abusive or rude or
anything else that it takes out of the ordinary or
should any affect my judgement as to whether or
not there's questions to be answered. The
10 questions are that - the issue is - are they
relevant? Are they proper? And is there any
reason why they shouldn't be ordered to be
answered - and I've heard your submissions on
that.

15 MR. RANCOURT: Yes, Master...

THE COURT: If you're asking me to take into
account the fact that you felt that you were under
duress - fine. . I hear you on that.

20 MR. RANCOURT: No. Thank you, Master MacLeod, the
reason I brought up the nature of the cross-
examination was in relation to the question of
whether or not there were undertakings. There was
a rapid back and forth, many objections...

25 THE COURT: Okay, I understand that.

MR. RANCOURT: ...many answers that were...

30 THE COURT: That doesn't go any further than
saying when somebody says "Sure" that's not an
unequivocal undertaking, so - to do additional
work and to find additional things. I hear that.

MR. RANCOURT: Okay, that was the only point that
I was making at this time with regards to that
evidence. So we can come back now to the last

point.

THE COURT: Okay. Let me just stop you for a moment and just ask the Court staff whether they're content that we proceed and continue because I'm not going to keep everybody sitting. We're going to have to take a break at some point. If we can finish this by 2:00 then I'll continue until 2:00 provided that's okay with the two of you.

THE REGISTRAR: Maybe if we could just have a five minute recess.

THE COURT: All right, so we're gonna just take a - yes, Mr. Dearden?

MR. DEARDEN: Master, maybe I should let them know, in fairness, I have another point to address to you with respect to what you see at tab eight of the compendium which is - so I would take about five minutes to make my point about Mr. Rancourt bringing supporters into the cross-examinations over my objections before the Examination for Discovery occurred.

And the gentleman that wrote that I attacked a self-represented witness and defamed me and Professor St. Lewis is sitting right there in the plaid shirt, and this is an extremely detrimental that such a thing would happen in the cross and I want to make submissions to you on that but after you have...

THE COURT: All right.

MR. DEARDEN: after you've heard from Mr. Rancourt. So I would be five minutes to make a submission that members of the public don't go

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into a cross-examination in Cornell Catana's offices.

MR. RANCOURT: I guess I will need time to respond to that, Master MacLeod.

THE COURT: Yes, well...

MR. DEARDEN: It's a term of the order that I'm gonna ask you to make, Master...

THE COURT: Yes, I'll deal with that when we get to it.

MR. RANCOURT: And the question of relevance will come up, I imagine.

THE COURT: I shouldn't think so. It's a term of the order. If I order a re-attendance to ask questions such as part of the relief, then Mr. Dearden is simply indicating to you that he'll be asking that a term of that order, that other parties are to be excluded...

MR. RANCOURT: Master MacLeod...

THE COURT: ...not parties.

MR. RANCOURT: Master MacLeod, I was not prepared to argue this point.

THE COURT: Well we're not going to pre-argue it. We'll get to it when we get to it.

MR. RANCOURT: Okay.

THE COURT: I'm trying to figure out how much longer this is going to take because if it was going to take more than two hours then it should be a special appointment motion. It was not down for that. It was down for an hour.

MR. RANCOURT: Master MacLeod, can I make another point which I feel is very, very important?

THE COURT: Just wait a second, please.

MR. RANCOURT: Yes.

THE COURT: And I am trying to ensure that the Court staff get the break...

MR. RANCOURT: Yes.

THE COURT: ...to which they are entitled..

MR. RANCOURT: Yes.

THE COURT: ...before we continue, and that the other litigants who are waiting to be heard this afternoon get heard. So I have to judge my time accordingly. So we're going to take a five minute break and then we'll continue until 2:00 o'clock, at which point the court staff will get their lunch break. If we're not done then we'll come back and I will have to figure out how to manage the day but at some point, obviously, I'm going to have to put a stop to this because it's taking much longer than I was told it would take when you both had the opportunity to confirm that to the Court.

MR. RANCOURT: I did not have the opportunity.

THE COURT: You did, sir. You had the opportunity to file a confirmation form. You got one from Mr. Dearden...

MR. RANCOURT: No, I did not.

THE COURT: ...indicating how long it was going to be and you could have filed one as well asking for more time but you didn't do that.

MR. RANCOURT: I didn't know that.

MR. DEARDEN: You did.

THE COURT: Well I know you didn't know it - or you may not know it, but if you're going to represent yourself it is your duty to figure it

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5 out - how to do it. Right? And do a certain
amount of indulgence will be given in fairness to
you, but only so much because what's fair to you
is unfair to the Defendant who is paying her
counsel to sit here through all of this. Okay?
And I will deal with all of that in due course.
But right now we are going to take a five minute
break, come back, we're going to try and finish
10 this. I'll ask you to wrap up as quickly as you
can without being unfair. I don't want you to not
have an opportunity to fully address your points.
And then I'll hear what Mr. Dearden has to say in
Reply, then I'm going to make my decision and then
I'll - about whether or not there's going to be
15 any order and then I will hear about terms and
costs. Okay? So that's the way we're going to do
it. We're going to start with a five minute break
- okay?

MR. DEARDEN: Thank you, Master.

RECESS

UPON RESUMING:

25 THE COURT: Yes. Yes, Mr. Rancourt.

MR. RANCOURT: Yes. I believe I had started
speaking to the second undertaking - so-called
undertaking of Doctor Claude Lamontagne.

THE COURT: Yes.

30 MR. RANCOURT: This is - the question is in
relation to obtaining the names of all people who
have been on a support committee from the
beginning. I am challenging the relevancy - that

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it has not been established and that it is of premature Discovery request in the alternative.

The Defendant affiant, Doctor Claude Lamontagne, contemplated additional post-examination information about the committee in question in paragraph 106 of the cross-examination transcript. However the - he did not make an undertaking. I guess, that argument I've already made. The committee in question has no relevancy to the Defendant affiant's affidavit, and the identity of the committee members has no relevance to the independence of the expert witness. This was to - or the expertise of the witness or to any aspect of the instant motion. The committee in question has nothing to do with the characteristics of the expert witness. The committee in question was a support committee in a separate matter, that is completely detached from the matter at hand, and to want to want to identify members of this committee, it has not been explained how that is relevant to - attempting to establish or harm the question of independence of this witness. I cannot see any relationship and no mechanism has been provided or advanced that would speak to this question regarding the identity of members of a committee who long in the past has been inactive and that is not related to this matter.

So the question of the identity of third persons on a committee not related to the affiant's expertise is not relevant because it is not probative in that it does not "increase or

decrease the probability of the truth" about the expert witness' independence or expertise. That's from paragraph 110 of the Rothman decision that we were citing earlier. I mean, it relates to the paragraph 110 of the Rothmans decision.

THE COURT: Right.

MR. RANCOURT: Uumm - so if the Honourable Court finds that this was a relevant question or that this was an undertaking - which I contest - which must be honoured, then in the alternative, an order at this stage in the process would prejudice the case by allowing the qualifications and/or independence of the key expert witness to be too broadly probed in a procedural motion - the original motion - without the benefits and protections of completed Discovery and trial.

THE COURT: You keep reciting that as if it's a mantra. I frankly, don't understand it. You have all the same protections in the cross-examination that you have on a Discovery, or for that matter, a trial. The same rules of evidence apply; the same rules of proper questions; the same right to object; the same rights of privilege; the same rights to take the protection of the Canada Evidence Act if you think the question will incriminate you. You have the exact same protections, you just don't have a judge sitting there.

MR. RANCOURT: Yes.

THE COURT: You have the right to object to a question and come to court to have it ruled upon, so...

MR. RANCOURT: Uumm...

THE COURT: And it's not accurate to say that there aren't protections. There are protections.

MR. RANCOURT: Yes...

THE COURT: You have the exact same protections. The exact same law applies. So...

MR. RANCOURT: Yeah, but, the point from Rothmans is...

THE COURT: I think you're saying that it's premature Discovery and again, it seems to me, misinterpreting what Justice Perell says. Justice Perell doesn't say you can't ask any question that could also be asked on Discovery. He says you can't abuse cross-examination to extract premature Discovery. Right? It's a question of abuse of process. It's not a question of it being some magical shield that it throws up.

MR. RANCOURT: No, and respectfully, Master, it's - there's a different component in the Rothman decision, I believe, which is this component that to protect the adversarial system of justice, parties are entitled to some degree to not put forward evidence until a later time if they choose to, and in order to protect...

THE COURT: Well, in fact, that's sort of a bizarre argument. The current rules under which we operate are rules of full and complete disclosure. You must disclose all relevant documents at a very early stage. You must then go to Discovery and answer all relevant questions put to you, and there are no secrets. There's nothing you're allowed to hold in reserve. It's a

full disclosure by both parties. That's how civil litigation works.

MR. RANCOURT: Yes, and that is the Discovery process. Uumm...

THE COURT: And it begins from the very moment of pleading and continues. There's no magic to when it happens. What Justice Perell is saying, in my view, is that you can't abuse cross-examination to do something other than its intended purpose, which is to get the evidence that's needed to argue the motion.

MR. RANCOURT: But, Master MacLeod, there's an important aspect of this case that is relevant to what has just been explained by the Court. The original motion - part of it - explicitly says that there is an intent to not do Discovery until after the forced mandatory mediation. So that is explicitly part - in fact, there is a third motion already on the record that is intended to stop the Defendant from going to Discovery, because I have filed a Notice of Examination for Discovery and there is a motion to stop it, because there is some argument which I do not understand, that somehow a forced mandatory mediation has to occur before Discovery.

THE COURT: That's the argument that the judge is going to hear at the motion, so...

MR. RANCOURT: Yes, but...

THE COURT: So let's just focus on whether this is necessary evidence for the arguing of the motion.

MR. RANCOURT: Yes. It's just that in this case the Discovery has not been early. It is at a

later stage.

So - let's see - where was I? Yes, so I believe that identity of members of a committee that's disconnected to any of this is not relevant.

THE COURT: You've said that.

MR. RANCOURT: Yes.

THE COURT: And I hear you.

MR. RANCOURT: And that's the conclusion for that last undertaking. So I...

THE COURT: To which you say is not an undertaking in any event.

MR. RANCOURT: That's right - yes.

THE COURT: Okay.

MR. RANCOURT: Yes. That concludes my presentation about each of the so-called undertakings and refusals.

THE COURT: All right. Thank you. Mr. Dearden, I don't need hear you on all of these questions in Reply. I think I would like to understand any Reply you have on the relevance of the committee members and also on whether or not I should order the Law Help Ontario information.

MR. DEARDEN: Okay. On the committee members - first point is that Mr. Lamontagne volunteered to produce that information. That's at tab five of the compendium. He volunteered to produce the names of the committee as part of the answer that he was giving to me when I was exploring what he was chairing as this committee - all going to independence. He is the Chair, Master, and who belonged to that committee will reveal how non-

partisan he really is in this proceeding involving another Prof at the University of Ottawa, who he is engaged in labour arbitration with now. But the main point of Reply is Doctor Lamontagne volunteered that information. There's no objection to it and it should be produced. It speaks for itself.

And by the way, Master, I never agreed to allow any resiling from the undertakings that Doctor Lamontagne gave candidly, and on those passages that Mr. Rancourt cited to you in saying "Oh - we're gonna undo all the undertakings 'cause we're gonna take all of this under advisement and, you know, stay tuned." You just simply can't do that.

The Law Help - the deponent has put in issue in both affidavits that he can't afford to pay any - or to Jim Chadwick's mediation fees. He specifically refers to the Law Help application in his affidavit. It's specifically referenced there and that alone should, in my submission, Master, require it to be produced. But as I said in argument, the Law Help application will ask "What percentage of equity do you own?" And it asks questions like "What RRSPs you have; what cash you have; what money you have; what additional properties you have?" We know he has a home and that's dealt with in the application. It also has questions about "Why are you representing yourself?" "I can't afford to hire a lawyer. I could pay some legal fees but not all. I can't afford a lawyer but I don't want to pay a lawyer",

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et cetera. So that's why I'm asking for the information. I'm not trying to impeach him at all, as he says I was trying to do. It's going to be a document that will provide sources of money to pay for half of the former Senior - Regional Senior Justice mediation fees, or whoever mediates - he's supposed to pay half of. So that's why I asked those questions - not to impeach his character whatsoever.

MR. RANCOURT: May I respond?

MR. DEARDEN: No.

THE COURT: No. That's not the way we do it. I had explained that earlier, so Mr. Dearden's only responding to your submissions and that's his right of Reply, and unless he raised something in Reply that he did not raise originally or was not responsive, then you don't get another opportunity to do that. I'll hear you on other issues in a moment.

MR. RANCOURT: Well he did raise a new point.

THE COURT: What would that be?

MR. RANCOURT: The point was that somehow the identity of these committee members would reveal how non-partisan or partisan...

THE COURT: Well I asked him to identify - to address that in response to your submission that there was no relevance to it whatsoever. So he had already told me he thought it was relevant so I asked him to explain that, which he's now done. But in any event, it doesn't enter into it if I conclude that it was an undertaking to provide information, because, as you've pointed out from

Justice Perell's decision, if an undertaking is given it has to be answered.

All right. So let's - can we come back at 2:45. Is that all right with you?

MR. RANCOURT: A quarter to three?

THE COURT: Yes. All right, so we'll take a break. We'll come back at 2:45 and which time I'll be able to give you my decision on the questions and then I'll hear you about any necessary orders to flow from that and I'll hear anything anyone has to say about costs or anything else.

RECESS

UPON RESUMING:

THE COURT: Sorry to have you come back early and keep you waiting but I - given that you're going to be in court tomorrow, I didn't want to inflict my handwriting on you.

All right, so I'm going to read you my Ruling on the questions and then I'll hear what you have to say about the appropriate order.

This is an action for defamation. The motion before me today is to compel answers to certain undertakings and refusals arising from cross-examination of the Defendant and of Claude Lamontagne who is a deponent of an affidavit.

By way of context, the affidavits themselves were sworn in opposition to a motion brought by the Plaintiff to compel the Defendant to participate in mandatory mediation under Rule 24.1. In fact, the motion, as I understand it, is

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5 to abridge the time for mediation and to require the parties to use an experienced, private mediator, rather than a mediator from the Roster. That motion - the main motion is returnable tomorrow before a judge.

10 In response to the main motion, the Defendant filed his own affidavit and an affidavit of Claude Lamontagne, which is proffered as expert opinion. Mr. Dearden cross-examined on those affidavits and brings this motion today to compel answers to certain refusals from Mr. Rancourt as well as two undertakings given by Mr. Lamontagne.

15 The undertakings on the first group of the refusals are in response to questions directed to the independence of Mr. Lamontagne; to his neutrality; to the instruction or information he received from Mr. Rancourt, or to his qualifications to give expert opinion evidence.

20 A second set of refusals has to do with the means, income and assets of Mr. Rancourt. These questions were asked in response to Mr. Rancourt's own affidavit in which he attests he is of limited means and cannot afford the fees for the proposed mediator.

25 There is a further group of refusals which relate to an application made by Mr. Rancourt to Law Help Ontario. These questions are also directed to the means and income of Mr. Rancourt. Again, this relates to the evidence given by Mr. Rancourt that he cannot afford the mediator proposed by the Plaintiff. Mr. Dearden seeks access to the applications made to Law Help

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Ontario in order to verify whether the financial information provided to Law Help confirms or contradicts the evidence in the Rancourt affidavit.

Finally, there are two questions directed to the issue of insurance coverage. Rule 3002(3) deals with the obligation to answer such questions, but these questions also relate to the affordability of mediation. If there is coverage, then the Defendant has access to funding for legal counsel and, of course, mediation fees.

Mr. Rancourt argues that the main motion itself is improper, does not comply with the rules of Civil procedure. He will argue that there is no jurisdiction in the court to grant the relief sought by Mr. Dearden on the main motion. He asked me to deal with that today but I have declined to do so. This is one of the issues on the main motion which is returnable tomorrow before a judge.

The issue before me is whether or not the questions must be answered in relation to the evidence the Defendant himself has tendered in response to that very motion. Obviously, if the judge dismisses the main motion without the need to consider the affidavit evidence or the cross-examination, that decision may render any order I make today moot.

In that case, perhaps the judge will stay the order relieve the Defendant from providing any answers. On the other hand, if the judge believes it appropriate to review the evidence before him

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or her and in that context must decide whether or not to admit the opinion evidence of Mr. Lamontagne, my Ruling today will, in all probability, be germane.

Both parties refer to the decision of Justice Perell in Ontario v. Rothmans, 2001, ONFC 2504 - leave to appeal refused, 2011 ONSC 3685, as well as my own decision in Caputo and Imperial Tobacco. These cases contain the guiding principles in assessing cross-examination on affidavits as opposed to Discovery. Caputo is directly on point since it also deals with the relevance of questions directed to admissibility and weight of expert testimony proffered by way of affidavit.

There can be no doubt that all of the questions asked are relevant because they are either directed to the admissibility of the expert testimony, including impartiality, bias, and qualifications of the expert, or flow directly from evidence tendered by the Defendant himself. Relevance is the first consideration, but just because a question is of some relevance does not mean the Court will order it to be answered. Other considerations come into play.

The Defendant focuses on paragraphs 144 to 146 of the Rothmans decision. He interprets the comments of Justice Perell, having to do with premature Discoveries and not disturbing the fairness of the adversary system, is somehow establishing a novel principle that would block any question which might also be asked on Discovery. With respect, that is not the thrust

of the Rothman decision. Justice Perell is simply exemplifying instances where the Court will not order answers to apparently relevant questions. The Courts, for example, will not condone questions that are abusive or improper; are disproportionate in the sense of requiring efforts or expertise not justified by the nature of the issues in dispute; not directed to evidence which is admissible or probative or asked for an improper purpose. These categories are not exclusive. In any event, there is no blanket prohibition on asking a question on cross-examination just because it might also be a question asked on Discovery. The issue, once relevance has been established, is whether or not there is a basis for withholding an order because it would be unjust to make the order, notwithstanding, the question may be relevant.

In these matters, the question of relevance is a question of law and a question of whether the Court ought to order answers is a matter of discretion.

All of the questions are relevant as a consequence of the affidavits tendered in response to the main motion and the answers given under cross-examination, with the possible exception of the members of the committee discussed in the Lamontagne cross-examination. Lamontagne volunteered the information, however, and it may be relevant to the question of bias. This, in my view, was an undertaking and it should be answered.

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In the exercise of my discretion I am not prepared to order the Law Help Ontario application be produced. I regard that as overly intrusive and while a financial component of such a discussion may not itself be privileged, the extent to which lawyer-client privilege attaches the discussions with services such as Law Help has not yet to be fully explored. I do not regard these answers necessary in light of the other questions I am ordering answered. All of the other questions are to be answered.

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Okay, so there are a number of things that flow from that. So the first is, when they should be answered and, secondly, how? So it is possible, of course, to direct that an answer be provided in writing within certain length of time and then the question is whether you need a re-attendance to ask further questions arising from those answers or not, and in that context, if I order a re-examination, then you want me to give direction as to who can be there and who can't.

MR. DEARDEN: Yes, Master.

THE COURT: So I'll hear you on both of those issues.

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MR. DEARDEN: It strikes me that the most expeditious way to get on with this would be to have them re-attend for examination - the cross-examination, Master. Putting it in writing, especially what Claude Lamontagne - I mean, Claude Lamontagne on the first - on the refusals. Refusal number one of Claude Lamontagne and Mr. Rancourt - they need to produce that in advance

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5 because these are emails that we do know exist and then there's the - at least three drafts. So it certainly would expedite to cross-examination on those and I have no doubt that I will want to have them re-attend to ask questions about the drafts and the emails that went back and forth. So on refusals number one in both of their cases, I would ask they be produced and that they be ordered to re-attend to be crossed on that.

10 On the - I was looking at the - equity mortgage questions, real estate, and again, I guess it makes a lot of sense that Mr. Rancourt provide answers to those questions in writing, but I will want to cross him on re-attendance on the answers he gives. I know as a fact that he bought 15 that place over 10 years ago for around \$226,000 and I didn't see a mortgage on the search we did, so there's - should be substantial equity in that, of which he owns 60 per cent of it. So I'll have questions for him on that as well. But it would 20 make sense that I don't just get that produced and then when he shows up on a cross, have it in advance and then ask him questions.

25 Dictionary definitions - there were dictionaries that Mr. Lamontagne did refer to during his cross that were in his office and for the life of me I don't understand what Mr. Rancourt is telling us now that this amazing memory loss of Claude Lamontagne, because he was 30 pretty specific, like, an online dictionary he looked at which he could go back on and look up the word "negro", I guess, and "house negro" that

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he looked at to prepare that affidavit.

The list of committee members could be provided in advance.

And back on Mr. Rancourt, Master...

THE COURT: Yes.

MR. DEARDEN: ...on the insurance with Curry and whether he's going to commence an action. I imagine that's not just going to be a simple "yes" or "no" and did he report the libel action to his Home Owner's insurance company? That should be a "yes" or "no". But either answer is going to raise other questions.

Sorry, I guess, sorting through all that, Master, what I'm saying in a convoluted way, is that it should provide - produce information to me in advance but I'm definitely going to have questions that are gonna flow from those answers, so they will need to re-attend.

THE COURT: All right. And I suppose, the other way to deal with that is if I ordered them answered if I order a re-attendance and to the extent that they call for a production of documents, you can include those documents in your Notice of Examination.

MR. DEARDEN: Do you want me to re-serve them with Notices?

THE COURT: Well I'm just saying that's - that is a technique that's open to you, but the order will deal with it. Do you have a date, by the way, that you're proposing to conduct such an examination?

MR. DEARDEN: I haven't discussed a date with Mr.

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Rancourt, and then the wild card would be Mr. Lamontagne, and naturally will want to deal with it at the same time, so...

THE COURT: Right.

MR. DEARDEN: I mean, certainly sometime next week would be my hope - next Thursday or Friday.

THE COURT: Okay.

MR. DEARDEN: October 13 or 14.

THE COURT: Okay. And so, Mr. Rancourt, I'll hear you, obviously, on the necessity for such a re-attendance but assuming that I order it, how would that work for you in terms of the timing?

MR. RANCOURT: I have already indicated to Mr. Dearden in writing that Thursdays are a bad day for me.

THE COURT: Okay.

MR. RANCOURT: But the 14th would work - October 14th.

THE COURT: October 14th works for you, Mr. Dearden?

MR. DEARDEN: Yes, Master.

THE COURT: Okay. And then, I wouldn't have thought it needed any clarification. I mean, I think it's pretty clear. I'll hear both parties on this as well, but that the only persons that have the right to attend at a cross-examination which is not in court - and that's the whole - it's not a public hearing - are the parties, and the witnesses, obviously, and their counsel.

MR. DEARDEN: I tried to convey that in emails prior to the cross-examinations and at the outset of the cross-examination, to both Mr. Rancourt and

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the two individuals that are sitting there. I know Mr. Hickey. I don't know the other gentleman's name, both of whom refused to tell me who they were when I asked them. When I asked them to leave they wouldn't leave. And then Mr. Hickey wrote what you see at tab 11 which calls me unethical and defames me and...

MR. RANCOURT: I'd like to make an objection, if I may.

THE COURT: Yes.

MR. RANCOURT: This document that Mr. Dearden is referring to is not in evidence, and there was no mention of this matter in the...

MR. DEARDEN: It's in page 154 of the Record, Master. It's in evidence.

THE COURT: Of your compendium?

MR. DEARDEN: Well it's in the compendium but it's page 154 of our Record.

THE COURT: Oh, I see.

MR. RANCOURT: I don't remember seeing it there.

MR. DEARDEN: Well, it is.

MR. RANCOURT: Okay, well then I'll retract that. I'm sorry.

THE COURT: All right. Thank you.

MR. RANCOURT: I'm sorry.

THE COURT: Yeah, I see it. But in any event...

MR. RANCOURT: But there was no...

THE COURT: ...I mean, it's quite clear and I'm surprised that the reporting service didn't support you in that. But in any event, I mean, there's no - surely no dispute about that. You can...

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MR. DEARDEN: They actually...

THE COURT: ...speak to anyone you wish but...

MR. RANCOURT: May I speak to this question?

MR. DEARDEN: May I please just please respond for a second?

THE COURT: Yes, I will. I'll hear you in just a moment - yes.

MR. DEARDEN: Master, to defend Cornell Catana, I did talk to Renzo (ph) of course about this and then the issue became - because they were not leaving - do I call the police? Do I walk out - and I consulted with my client, obviously, and said "No, if they're not going to leave, I'm putting it on the record. I'm telling Mr.

Rancourt this conduct will be used as evidence of malice and aggravated damages in the main action" but there's some urgency to try to get this thing to mediation to make an attempt to settle before it spins completely out of control, and I think you've got a good taste about my concern being valid on what happens. And stunts like this - when I have Mr. Hickey there, defaming me - defaming Professor St. Lewis and, you know, just completely abusing why he was in there is why I'm asking you to add a term specifically so they do get it point blank. Because if they show up, or try to show up again at any cross-examination, I want to cite them for contempt and we'd at least have an order that would point to - notwithstanding that it's trite that public don't attend private cross-examinations.

And then I'm gonna make submissions to you on

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costs in terms of the stunt that they pulled during those cross-examinations, but that's why I'm asking for a term, Master, is if they try to show up at Discoveries or they try to show up at further cross-examinations, that I can point to an order to then bring a motion to cite them for contempt.

THE COURT: Yes, so, Mr. Rancourt, I'll hear you on both of those. That's first of all whether you should have to go back and answer further questions and secondly, whether there's any justification for anyone else being present, other than the parties and counsel.

MR. RANCOURT: Yes, Master. I'd like to start with the second one, if I may?

THE COURT: Sure.

MR. RANCOURT: I couldn't find any rule that explicitly said that the public could not attend cross-examinations on affidavits and my reasoning as a non-lawyer was that this was a cross-examination of evidence and that court proceedings generally speaking are public, and that therefore this was part of a court proceeding which in principle should be public and transparent. So my reasoning was that in examining the evidence in this way the public has a right to see the open court process. And I realize that there is a condition of - what's it called legally - implied - until something put into evidence it's not in the public record, so I understand that but I see no reason why that could not be explained as a condition to any observers or members of the

public. I think there has to be a balance between to openness of the legal procedure and preserving the legal procedure - and I think that a fair balance would be that there could be public observers at cross-examinations on affidavits in evidence as part of a litigation and that we would simply need to instruct members who are observing that there is a condition related to the privileged nature - in the same way that in Discovery you cannot use documents from Discovery in any other way except for the proceeding, and you can present them in evidence or not. The same kind of conditions I think, would apply here.

And so I felt that for a motion - for a motion the reason that we go to affidavits and cross-examinations is to make the process more efficient. That's my understanding of why motions are done this way - one of the reasons why motions are done this way is to make the process more efficient and to not have to involve a full trial-like procedure when you're deciding on a procedural question for a motion.

However, that does not remove the fact that it's still a decision that's part of a public proceeding - a normally public proceeding. It's still a trial-like process, it's just that it's been modified in a way to make it more efficient in terms of the delivery and the decision making. So the principle that I cling to is that all such processes of the court should be reasonably transparent and that therefore there should be, where possible, access to public observation -

that this is an essential feature of our judiciary system and that I see no rules or reason why this cannot be done in a cross-examination of evidence in an affidavit for a motion, which is such a procedure.

So that was my principled decision at the time and I asked Mr. Dearden in writing to explain what legal basis there was for his position, and to briefly explain, please. And I asked this, I believe it was four days before. I sent an email but we had an exchange about it, and the last email I sent was some was four days before the actual cross-examination and I said "Please, just simply give me a legal argument or something where I can understand your position?" Because the only answer I was getting was "The public cannot attend cross-examinations" without any explanation or referring me to a rule. I asked to be referred to a rule. I was just getting a, sort of, a blanket statement of that type which I didn't understand and which I believe conflicts with the idea of an open and transparent court process.

So I - Mr. Dearden chose to not reply to that email, and instead - instead challenged us at the cross-examination itself - demanded that the observers identify themselves, which I interpret and see as an invasion of their privacy because they are members of the public who believe they are legitimately attending a - something that should be transparent. So I saw that as potentially a violation of their privacy and ordering me to identify them? I thought that was

5 crossing a line and, ummm, so I - it was what I
would characterize as an aggressive confrontation.
Everyone - members of the public stayed very calm
and simply asked to be given a reason. They were
not given a reason and then Mr. Dearden explained
that this would be used to argue malice and so on
against me eventually, but that we would go on -
that we would continue. We did continue, and the
10 fact that the public were present did not disrupt
the proceedings in any way, and none of the
information that would have been considered
privileged was divulged in any way, to my
knowledge. And so there was no issue. And I'm
certain that if Catana had asked the public to
15 leave and explained that these were private
premises and that they felt that they were
entitled to demand that unwanted persons leave,
I'm sure that the members of the public - I can't
speak for them, but I have the impression they
20 would have left, I think. But it was the
interpretation of - the interpretation - I
certainly interpreted that Mr. Dearden seeded (ph)
the point when he said "we're going to go on" and
we did go on and there was no interruption.

25 So I'm curious as to, Master MacLeod, I'm
curious as to whether your decision about that the
public is not allowed into cross-examinations on
affidavits for motions - is that actually going to
be part of the Ruling - that statement?

30 THE COURT: Well that's what Mr. Dearden is asking
me to do and I'm...

MR. RANCOURT: So that would be like...

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THE COURT: ...and I am considering that.

MR. RANCOURT: Uh huh - so that would be, like, a general statement that would...

THE COURT: I'm...

MR. RANCOURT: ...establish that...

THE COURT: ...not making any general statements. I am dealing with this cross-examination if I order it to take place and who can be there.

MR. RANCOURT: I see.

THE COURT: The Court can certainly give direction about that.

MR. RANCOURT: Okay. Uumm - so that was how I understood what was going on with regards to public presence at the cross-examinations.

Uumm - now we could move on to the second point.

THE COURT: That would be good.

MR. RANCOURT: What was the second point? I'm sorry. I'm - it was...

THE COURT: Whether I should order a further examination or not.

MR. RANCOURT: Oh - yes. Thank you.

THE COURT: Or the questions to be answered - I haven't yet decided how...

MR. RANCOURT: Yes - thank you.

THE COURT: ...and whether there will be a follow up examination or not.

MR. RANCOURT: Yes. Well - this - I understand my statements now to be somewhat of a response to the presentation that Mr. Dearden just made.

THE COURT: Right.

MR. RANCOURT: And I want to explicitly say that

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the dictionary definitions are not about the word "negro", nor are they about the word "house negro" as Mr. Dearden has stated. The dictionary definitions at issue in this entire motion is related to racist communication, and the word "racist" and "racism". So that was, I think was an error. Also, Mr. Dearden referred to a sudden loss of memory that I may have had, uumm...

THE COURT: He didn't mention you - no. He said Mr. Lamontagne.

MR. RANCOURT: Oh - that I had mentioned that Mr. Lamontagne had a sudden loss of...

THE COURT: I don't think you need to respond to every issue that was raised. You need to respond to the question of whether or not it is necessary...

MR. RANCOURT: Okay.

THE COURT: ...for you to re-attend to answer these questions under oath, and to answer any necessary follow up questions.

MR. RANCOURT: Yes.

THE COURT: As opposed to some other process that you might propose for answering these questions.

MR. RANCOURT: I understand. And this was my last point in that regard.

THE COURT: Sure.

MR. RANCOURT: Uumm - the loss of memory - it's not a loss of memory. What I was stating is that Mr. Lamontagne doesn't have memory - that's the position - beyond the extensive information that he's already given in cross-examination. That's the point.

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Uumm - so that addresses some of the - to the mischaracterizations. Now with regards to whether I should - whether it should be forced that we re-attend the cross-examination - so there is no question, as I understand this process so far, that we must answer all the questions except the ones that - the one question about the Law Help Ontario application, and therefore the only question is - should be - be forced - or ordered to re-attend a cross-examination. Am I - do I understand this correctly?

THE COURT: Yes.

MR. RANCOURT: Okay. Uumm - I - my - my belief is that the entire motion is unfounded and is initiated as part a campaign to get premature Discovery at the same time that Mr. Dearden and his client are refusing to go to actual Discovery - explicitly refusing. And with motions refusing, a Notice of Examination for Discovery which I have duly filed following all the rules and procedures which is being simply rejected - it is my understanding that in the court, some degree of Discovery can only help with regards to mediation. The jurisprudence that I have studied and that I've read about is of the position that Discovery can only help. But the Plaintiff is refusing to go to an actual Discovery process but wants to get...

MR. DEARDEN: Master, I'm objecting.

MR. RANCOURT: ...one sided...

MR. DEARDEN: That has nothing to do with the question you've asked.

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THE COURT: Well - and also I don't have evidence in front of me about that. You're going to be arguing about that - you're going to be arguing about the motion - the main motion itself tomorrow.

MR. RANCOURT: M'hmm. Yes.

THE COURT: And as for whether or not the motion to have early mediation is a way to avoid Discovery and therefore an abuse - I suppose you can make that argument on the main motion as well if there's anything to support it. Although I would point out to you that the Rule that presumptively was that mediation should happen before Discovery but after documentary production. That's the way that that's set up. But the Court has the discretion to change the timing - as you can read it from the Rule. In any event, that's what's going to be discussed tomorrow.

MR. RANCOURT: Yes.

THE COURT: The question here is, having Ruled that these are proper questions that should have been answered, and ordering that they be answered, ordinarily, the Law is that ordinarily, they're entitled to get those answers under oath and to answer - to ask the follow up questions that would have been asked in the first place had the answers been given. And so ordinarily, there is a right - a presumptive right to have you re-attend and examined under oath. The only reason that I wouldn't order that would be that if you had a very clear alternative that was going to provide them with the answers and then you could

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demonstrate to me that it will be a waste of time and an onerous thing for the parties to have to re-attend.

5 So that there is a decision of Master Beaudoin, as he then was, saying that just because the Court can it order doesn't mean the Court will, and that I need to be satisfied that there is utility in having you come back and it's not just being done to punish you for not answering the questions.

10 So - but understand the way it works. The question - we start from the presumption that if I've ordered the question to be answered, it was a proper question, it should have been answered at the time. If that had have been done then there would have been follow up questions that could have been asked, obviously, reasonable follow up questions. And therefore, how do we put the examining party back in the position that they should have been in if the questions had been answered in the first place. That's the justification for - normally saying, go back and answer the questions and not have - and not get into a long involved process.

25 Occasionally, though, the question is something like produces your mortgage. Right? And so if you do that maybe that's sufficient and maybe there are no follow up questions. But here we've got a mixture of questions, so my inclination...

30 MR. RANCOURT: Yes.

THE COURT: ...is to think that it's - that I

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should follow the normal course and have you go back and answer the questions. That may be the most efficient way to do it.

MR. RANCOURT: Yes, I...

THE COURT: And if you object to that - I mean, you may not like my Ruling, but if you object to that, then I'll hear why that's not a good idea. That's all I'm concerned with right now.

MR. RANCOURT: Yes. Well, Master, I do object to it. And I don't know if your disposed to hear my reasons or not, but my reasons relate to - my reasons relate to my belief - based on evidence that I've presented in my affidavit for the instant motion, that the cross-examination was run in an improper fashion and was overly aggressive and inappropriate in many ways. And so I would like to present that evidence, if I may, to the Court.

Uumm - the - first of all, the Plaintiff's counsel did not practice due courtesy. Mr. Dearden has systematically refused to canvass me or to reply for dates in all aspects of the action - all motions, cross-examinations, Discovery plan, examination for Discovery, despite my written protest against his disregard...

THE COURT: Okay - hang on. That's got nothing to do with the conduct of the Discovery. I want to understand - if you're going to suggest that you were abused during this Discovery which you've suggested earlier...

MR. RANCOURT: Yes.

THE COURT: I'll look at the evidence about

that...

MR. RANCOURT: Okay. That...

THE COURT: ...only in so far as it might be a reason not to have you go back, but...

MR. RANCOURT: Yes.

THE COURT: ...I'm not going to go back into re-visiting all this.

MR. RANCOURT: Okay. My - my - the only - the reason I believed that that was relevant is that for the cross-examination, the dates were not canvassed so that's...

THE COURT: We just did today. Right, so we've got the date established for...

MR. RANCOURT: We...

THE COURT: ...the follow up...

MR. RANCOURT: For the follow up - yes we did.

THE COURT: ...if necessary and we know it's a date on which you're available.

MR. RANCOURT: Yes.

THE COURT: So that's not going to be a hardship.

MR. RANCOURT: No, it will not.

THE COURT: Okay.

MR. RANCOURT: Uumm - I'm reviewing my points to make sure they follow your criteria.

I believe that the transcript shows in many questions, in particular in the region of the transcript between questions one to 127, that there was badgering. By badgering - the way I understand it, is that, for example, Mr. Dearden would ask me a question and I would say "Well I'll take that under advisement. I need to think about it" and he would repeatedly ask me the question

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over and over again despite the fact that I had already said that, you know, this is one that...

THE COURT: That's because there's no such thing as taking it under advisement. Lawyers try that all the time.

MR. RANCOURT: No...

THE COURT: They don't get away with it.

MR. RANCOURT: Okay.

THE COURT: If you take it under advisement you're refusing to answer.

MR. RANCOURT: Okay.

THE COURT: Right? So there's no such thing. I mean, you either can answer the question - you're there as a witness.

MR. RANCOURT: Yeah.

THE COURT: You're not there as a - to argue things. So you answer the question...

MR. RANCOURT: So...

THE COURT: ...if you know the answer unless you object to it on a proper ground. If you object to it and don't answer it, you run the risk the Court will not uphold your objection and will order you to answer.

MR. RANCOURT: M'hmm. Now I was - the term "under advisement" I used only a few times in the transcript. Most of the time I was saying that I felt this was too broad - that it was premature Discovery. That was the nature of my objection.

THE COURT: So that's an objection...

MR. RANCOURT: Yes...

THE COURT: Exactly.

MR. RANCOURT: ...and in those objections there

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5 just kept - this barrage of, you know "You've got to answer", et cetera, et cetera. So I felt - and I could read from the transcript to give examples if the Master would be agreeable to that. And when I - at one point at paragraph 127 when there had been a particularly - what I felt - aggressive string of these, I said - I actually called it badgering and Mr. Dearden's response was,

10 "Mr. Rancourt, I'm putting you on notice again that the shots you take at me as counsel will be used against you in terms of malice and aggravated damages and punitive damages. Do not tell me that I am badgering you."

15 That was paragraph 128 of the transcript, but I think if - I firmly believe that if we were to read the paragraphs that I was referring to - and I guess we'll have to unless...

20 THE COURT: Well I've read the one that you put in your affidavit.

MR. RANCOURT: H'mmm?

THE COURT: I've read the one that you put in your affidavit.

25 MR. RANCOURT: Yes, so I guess I'll take out the transcript and I'm going to Exhibit B of my affidavit - that's the full transcript, and I'm going to - as a starting point, start with paragraph 127...

THE COURT: Are you at Exhibit B?

30 MR. RANCOURT: Uuhh - this is Exhibit B of the affidavit of my Motion Record for the instant motion.

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THE COURT: This motion or the main motion?

MR. RANCOURT: This motion.

THE COURT: Okay.

MR. RANCOURT: The instant motion. Uumm - and -
uumm - I'm going to 127 where - where there was
this question of the term "badgering", but the
sequence before that - and I haven't read this in
a little while, but was quite - I don't know.
I'll just - I'll just try to illustrate...

THE COURT: Sorry - I'm not following you.

Exhibit B - yes, okay - that's the transcript.

MR. DEARDEN: He's at question 127, Master, and
he's saying the questions that I asked badgered
him. There all the questions you just ordered him
to answer. It's RRSPs, assets...

THE COURT: Yes.

MR. RANCOURT: Is that an objection, Mr. Dearden?
Are you making an objection?

MR. DEARDEN: I...

THE COURT: Mr. Dearden is helping me to find the
question. All right, so question 127 - is that -
"I'm putting on the record the questions I have
for you under cross-examination about your
statements..." and you object that he's badgering
you and insisting on characterizing the situation
a certain way. Then I see the exchange you're
referring to. Yes?

MR. RANCOURT: Which one?

THE COURT: The one you just were telling me about
where Mr. Dearden warns you that...

MR. RANCOURT: Yes.

THE COURT: ...what he calls "shots" are going to

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be potentially used against you in terms of malice and aggravated damages and punitive damages.

Right?

MR. RANCOURT: I'm searching for an illustration of what I mean. Obviously I hadn't prepared to - for the need to present it in this way at the actual Hearing.

MR. DEARDEN: You'll see at page 35...

THE COURT: Well, I've read various extracts from this transcript and when I was preparing for this I read the - much of the transcript, and I don't see that there's any evidence here that Mr. Dearden was rude to you or abusive to you. He doesn't have to accept your answers. He's allowed to cross-examine you. That's the whole point of it.

MR. RANCOURT: I'm searching for the...

THE COURT: You know, it's not necessary that you find the experience to be a pleasant one, sir.

MR. RANCOURT: It's difficult to do this on the spot, obviously, Master MacLeod. It's a very large transcript and I'm having difficulty, you know - I can't read this all. I would have to read it and actually find the segments but - that I'm thinking of.

THE COURT: Well if you were seriously coming here expecting that one of the reasons why examinations shouldn't be ordered is because it was conducted in an abusive fashion, then I would have thought you would have pulled out some examples of that. I mean, I don't doubt that you didn't like being cross-examined and you don't want to go back but,

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you know, that's...

MR. RANCOURT: Yes, that's my...

THE COURT: Most people don't. Right?

MR. RANCOURT: ...ignorance of the process,
Master. Uumm - I - I had an impression that there
- that I - that there would be a detailed
examination of my Motion Record. Uumm - uumm -
but that's - I think we need to chalk it up to my
inexperience. Uumm - I'm looking at my points
now. I - this is an affidavit...

THE COURT: Sorry - just so I understand what that
means. I mean, if you thought by that we were
going to go through your Motion Record page by
page, then we would be here for a week. Right?
If you thought - if you meant by that that all of
this material is before the Court and you would be
able to point me to what it was you wanted me to
consider, then by all means. That is the process.

MR. RANCOURT: Yes, I needed to find the just
balance between those two.

THE COURT: Absolutely.

MR. RANCOURT: Yes.

THE COURT: That's part of the trick.

MR. RANCOURT: Yes. Okay. Uumm - I'm still in my
affidavit now. In the course of cross-
examinations - and this is something that I put in
affirmation. I stated approximately 50 times in
the first many pages, I counted up to 30, and I
estimated that for the entire transcript it would
be 50. But - so I stated approximately 50 times
my intention to respond only after consulting a
lawyer, for example, such as using the term "under

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advisement", often needing to repeat the statement while being badgered on a given question - a given question, despite my expressed commitments to answer after consultation and within a week.

5 THE COURT: Right, but you don't get to do that. Right? You don't get to do that. You don't get to stop the process and say "I don't want to be examined. I want go and consult a lawyer." If you want to have a lawyer then you bring the lawyer with you. The Discovery is...

10 MR. RANCOURT: I...

15 THE COURT: The Discovery of the cross-examination is exactly - the Rules apply the same as in the courtroom. You can't say "Sorry, Your Honour, you know, I don't want to answer that question. I want to go consult a lawyer first." It's too late. So, you know, that's not a proper objection.

20 MR. RANCOURT: Okay. In another point I felt that I was - I believe that I was being misled. During cross-examination, counsel for the Plaintiff attempted to mislead me by - to mislead me to accept that I was liable up front for the cross-examination transcript costs. So the exchange, starting at paragraph 162 of the transcript goes like this:

25 "It will be on the transcript.

30 Answer: "Will you be sending me a copy of the transcript?"

Then Mr. Dearden again,

"You will be buying a copy of the transcript from Madam Court Reporter."

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Answer "No I will not. Will you send me one?

Question: "I'm going to buy one and you can buy one because they have copyright in them."

Answer: "No, I believe the Rules of Procedure don't go like that. You are to provide me one if you are going to use it in court."

Answer: "Well let's see - okay? Right now I want to..." and then we change the topic. So I felt that that was misleading.

Mr. Dearden then never corrected his statements about costs of the transcript or apologized for his incorrect statements.

MR. DEARDEN: Master...

THE COURT: As far as I understand it, Mr. Rancourt, that's exactly how it works. The party who's conducting the examination orders the first copy of the transcript for which they pay a higher fee. You then get to order a copy of the transcript for which you pay a lower fee, and that - with the exception of someone who examines a witness in aid of a pending motion wherein a different rule applies and sets of Rules, but that's precisely right. You are not allowed to copy photocopy the transcript in order to avoid paying the Court Report their fee. And those fees are all...

MR. RANCOURT: Uumm...

THE COURT: ...regulated and they tell you what the second copy costs as opposed to the first copy, and it's by the page and it's not inexpensive, that's true. Examinations can cost thousands of dollars just for transcripts.

MR. RANCOURT: Master MacLeod, I'm sorry, but please accept this. I believe I need to correct what you just said because the Rules of Procedure are quite explicit in the case of a cross-examination on an affidavit in a motion and they explicitly say that the examining party is liable for all of the costs even - irrespective of how the motion goes. And the Rules explicitly say that. Now we would need to pull out the Rules...

THE COURT: That's fine. You show me the Rule. And in any event, I'm not sure what turns on it. There are different rules for different purposes, as you know.

MR. DEARDEN: And he did get the transcript for free.

THE COURT: And you did get it so...

MR. RANCOURT: Yes, so that's also an indication that this is the Rule.

MR. DEARDEN: It's irrelevant.

MR. RANCOURT: I think that Mr. Dearden could confirm that that's indeed the Rule as well.

THE COURT: I don't doubt if you say that it is then perhaps it is.

MR. RANCOURT: And I'm sorry I didn't write down the Rules because there's a lot of rules, but...

THE COURT: There are a lot of sub rules too. But anyway, I'm not sure what hinges on that. That hardly strikes me as being an attempt to mislead you.

MR. RANCOURT: But I'm sure that Mr. Dearden would confirm that the Rule is in fact what I explained.

MR. DEARDEN: Do not - don't look at me.

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MR. RANCOURT: Okay.

MR. DEARDEN: You got it for free from the Court Reporter. It's completely irrelevant to what we're here for today.

THE COURT: I mean, it is a reality of litigation that there are going to be steps that will cost you money even if you're representing yourself, because you have to pay Court Reporters, for example,

MR. RANCOURT: Yes.

THE COURT: ...on Discovery. And what I've just described is the Rule.

MR. RANCOURT: The only point I was making, Master MacLeod, is that my evidence that Mr. Dearden attempted to mislead me regarding costs and that is precisely because the Rule is in...

THE COURT: And if you had to look it up and I had to look it up and Mr. Dearden had to look it up, then it hardly qualifies as an attempt to mislead you.

MR. RANCOURT: Okay. Uumm - during cross-examination, I believe Plaintiff for counsel (sic) attempted to mislead me by repeatedly insisting that all his questions were legitimately required to be answered in the cross-examination on affidavits on a motion. For example such as, there was a question like this:

"Okay, did she..." and we're speaking about a person called Mireille Gervais (ph) agree to be a witness at the main action?

Answer: That's not something I need to answer. And you probably know that's the

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case. Do you agree that that's not something I need to answer?

Question: I wouldn't have asked you the question if I didn't expect an answer to it. I'm just not arguing with you.

Answer: Do you agree that I don't have to answer that question?

Question: No, you should be answering the question. Answer the question.

Answer: You agree that you that I'm not obliged to answer this question?

Question: I can't force you to answer it, sir, but I can bring a motion.

Answer: Within the law and the procedures, do you agree that I don't have to answer that question?

Question..."

THE COURT: You're asking Mr. Dearden to give you legal advice. Right? He can't give you legal advice. You have to come armed with that and you did a fairly good job of that because you resisted answering questions. As it happens, I found that you weren't correct in your resistance but you did the right thing. You objected and then you came to the Court for a Ruling.

MR. RANCOURT: But - yes, Master MacLeod, I want to point out that this question that Mr. Dearden was repeatedly insisting was required to be answered is one that he did put forward in this motion. It was completely dropped at the last minute in putting forward this motion. It is no longer a relevant question.

MR. DEARDEN: He has in his affidavit, Master, a couple of questions about Miereille Gervais. The fact that I decided not to waste your time today about that question is irrelevant. It was directly related to something in his affidavit.

MR. RANCOURT: I object. Is that a proper intervention by Mr. Dearden?

THE COURT: Look, Mr. Rancourt, I've given you an awful lot of leeway today, so let's me run the court and not you. Okay? If you have an objection you can state it. I'll hear it. I'll rule on.

But when I told you we can't - as it happens I've cleared my list for the rest of the afternoon and sent everyone else away, but, you know, something that was going to take this long should have been anticipated and should have been a special

appointment. I'm going to hear what you have to say and I'm going to rule on it and I'm trying to give you as much latitude as I can, but remember what I said earlier - the longer we're here the more it's costing the other side and that's - and so I have to be fair to both parties, and there is limited latitude. The assistance that you can get as a self-represented individual is limited. No one's going to give you legal advice - not me and certainly not Mr. Dearden. He can't do that.

MR. RANCOURT: Thank you, Master. I was not asking for legal advice but, uumm - I umm - the only point...

THE COURT: But, sir, trust me, lawyers disagree about what's relevant and not relevant. If that wasn't the case there wouldn't be all this case

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law with lawyers on both sides. Right? That's what we rule on all the time because there are legitimate disagreements. So having someone asking you a question that you disagree with is not in any way abusive or misleading, in and of itself.

MR. RANCOURT: Master MacLeod, I'm in the - giving evidence that I felt that the cross-examination was improper in many regards.

In another piece of evidence, I have a list of questions that were asked and were insistently asked but that were dropped, and there were many of them. These questions include: "Do you have any ownership in patents? What do you think you would ask Mr. Chadwick..."

THE COURT: We're not going to do that. We're not going to go through all the questions that were asked that you didn't answer - that Mr. Dearden didn't move on. Right?

MR. RANCOURT: Okay.

THE COURT: I mean...

MR. RANCOURT: All right...

THE COURT: ...it's up to him if he wants answers or not. That one, for example, I might well have ordered be answered because it's relevant to your means and ability to pay. But he didn't bring the motion so I'm not going to comment on it or rule on it or make any other...

MR. RANCOURT: Okay. I'm only presenting this because I feel that it's evidence regarding that the cross-examination was improper.

THE COURT: Well you keep using the word

5 "improper." That's not what I asked you to
comment on. I asked you to tell me why I
shouldn't order you to go back and finish the
examination by answering the questions that you
refused to answer and appropriate follow up
questions. That's what I asked you to deal
with...

MR. RANCOURT: M'hmm.

10 THE COURT: ...and one reason that you felt that
the cross-examination was misconducted.

MR. RANCOURT: Yes, I'm sorry for the...

15 THE COURT: I've heard what you said about that
but anything that I've seen so far that you've
shown me is not persuasive. I don't see any
evidence that Mr. Dearden behaved in any way
improperly. He may have been aggressive. He may
have been assertive. I don't think there's
anything here that suggests he was in any way rude
to you. He may have been even impatient with you
20 at times. None of that makes it improper.

MR. RANCOURT: Okay - "improper" was not the legal
term. I mean, I think from the - I think that
from the Rules the legal term is...

25 THE COURT: I understand that, but you would have
to persuade me that it was - that going - I'm
really not involved in ruling on what happened at
the previous Discovery because nobody's brought
that motion. Its only relevance is to see whether
there's any basis for saying you shouldn't have to
30 go back. And we're not talking about going back
for days and days, we're talking about going back
answering these questions and a limited number of

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follow up questions. So I can't imagine that's going to take more than a couple of hours.

MR. RANCOURT: Would the Court be open to requiring that on this motion, this would be the last cross-examination? Because I have the sense of multiplication

THE COURT: Well there's no right to keep having cross-examinations unless there's a whole series of additional refusals that leads to another motion. So let's just go back and answer these questions. Not different - these questions and questions that arise from the answers. I think that's quite clear. And if it goes beyond that, object, and come back again, but...

MR. RANCOURT: Okay.

MR. DEARDEN: Master, one thing we didn't address...

THE COURT: Yes,

MR. DEARDEN: ...was when productions that can be given to me in advance should be given.

THE COURT: Yes, well I...

MR. DEARDEN: If it is October 14th that the re-attendance will occur, I'm wondering if October 11th would be a reasonable date to...

THE COURT: Yeah.

MR. DEARDEN: ...at the end of the day for Mr. Rancourt to provide me .

THE COURT: Well you did say in your submissions that, obviously, you should get the things - the written things before the examination so you don't have to stop and read them during the examination.

MR. RANCOURT: Uumm - I just need to consult my

agenda on that point.

THE COURT: Yes.

MR. DEARDEN: It simply was when you could provide it to me and I'm suggesting the end of the day on October the 11th which is Tuesday.

MR. RANCOURT: Yes, Master, I'm looking at my agenda and I would very much prefer to do it in the usual way which is to bring the documents at the cross-examination.

THE COURT: That's not the usual way. The usual way is you have the documents in advance because they're usually examining on an affidavit. And if you are ordered to produce documents that you refuse to - or you gave the undertaking to produce them, they would have them before they had you come back and it. It's not efficient. Otherwise, you produce the documents out of your briefcase for the first time at the examination. You've got to stop while Mr. Dearden reads them and then figure out what questions he wants to ask you. That's just not efficient. We're not talking about a large number of documents. You know, the ones that are - Mr. Lamontagne's dictionary...

MR. RANCOURT: I'm extremely busy these days. I have a Labour Arbitration Hearing ongoing at the moment.

THE COURT: Yes.

MR. RANCOURT: There is another motion tomorrow, and the 14th is after all this is over. So I was hoping to use, you know, the 13th to gather this information. That's my problem with the scheduling.

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MR. DEARDEN: You have the whole weekend. You have the whole weekend.

THE COURT: Okay, well I've heard what you both have to say about that. I'll consider it.

Okay, so nothing else, other than - I heard what you said - that you feel it was an abusive cross-examination.

MR. RANCOURT: No, I think those are the things that I wanted to say on that point.

THE COURT: Okay. Okay, thank you. So I have added to what I already read you that Mr. Dearden wishes to have the witnesses re-attend to answer the questions under oath and to permit reasonable follow up questions. Notwithstanding that some of the questions might usefully be completely answered in written form, clearly not all of the questions are simply "yes" or "no" answers and many of them invite proper follow up questions.

In my view, and notwithstanding the Defendant's argument that the previous examination was conducted aggressively, a submission that I do not find to be supported by the evidence, I am ordering that the questions for production of documents be entered in writing by October 11th, 2011 - that is, prior to re-attendance, and that the witness then re-attend for examination. Mr. Rancourt and Mr. Dearden both confirmed their availability for October 14th, 2011 unless otherwise agreed the witnesses are to attend on that date.

Mr. Dearden also asks for clear direction as to who may attend at the cross-examination. The

5 need for that is demonstrated by exhibit at page
154 of Motion Record. Certain individuals who
were not party to the action attended at the
cross-examination and refused to leave,
notwithstanding Mr. Dearden's objections. One of
these observers then posted comments on the
Internet, describing the cross-examination and
attributing unethical behaviour to Mr. Dearden,
while also suggesting the Plaintiff herself was
10 somehow associated with evidence of wrongdoing at
the University.

15 Mr. Rancourt objects to such direction on the
basis of open court principle. In that he is
misguided. Cross-examination or Discovery does
not take place in open court although it does take
place under court supervision. It is only once a
transcript or portions of a transcript are
tendered in evidence that they become part of the
Court Record. Motion Records and exhibits at
20 trial are part of the Court Record. Court
Hearings, such as this motion, are held in open
court, though that was not always the case. Prior
to adoption of the new Rules, Chambers Motions
were not considered to be open court or on the
25 record. In any event, it is quite clear that
there is no right for the public to attend an
examination out of court at the office of the
Special Examiner and their court reporter. Even
if that were not the case, however, the Court
30 could give the direction about the conduct of such
examinations.

There will be a follow up examination if the

Plaintiff wishes it. No one but the parties and their lawyers and their Reporter may be in attendance unless otherwise agreed.

MR. RANCOURT: May I ask you a question in relation to these last...

THE COURT: Yes.

MR. RANCOURT: Would it be possible for the Court to give direction? I would like to be entitled to bring an advisor with me. I have pointed this out to Mr. Dearden in writing in the past and he expressed that he wanted...

THE COURT: If you hire a lawyer you can bring a lawyer with you.

MR. RANCOURT: I was hoping to bring an advisor that is not a lawyer.

THE COURT: Well here's the problem - here's the other problem that arises, and that is the question of who might be giving evidence. Right? So one of the reasons - some of the case law if you look at it, has to do with excluding the party from the Discovery, and the Court will do that only as a last resort. But they will sometimes. And the concern - and it's the same concern, if this was a trial, there would undoubtedly be an order excluding witnesses or potential witnesses. Right? And for the same reason, you can't have people sitting in on reading Discovery transcripts before they give evidence. And if they do that they will, of course, be asked and challenged on that. So it in your own best interest not to have anybody there who might subsequently be giving evidence because it'll be challenged - that

they're just tailoring your evidence.

MR. RANCOURT: I understand this, Master MacLeod. I was actually planning to ask someone who is part of Canadians for Accountability who has nothing to do with the - he's the Executive Director in fact of...

THE COURT: And that's exactly the sort of thing that you can't do without agreement. You seem entirely capable of handling yourself. You're quite articulate and you're able to read the Rules and you're able to read the case law and draw principles from them. I don't think that you need assistance. You're entirely entitled to hire a lawyer to be there just for this purpose if you wish to do that, but I'm not going to change this further. If you've got someone then you can speak to Mr. Dearden and you make an agreement - that's fine. He may have someone he wants to be there that you don't object to as well but I'm limited it in this way so I'm not going to re-visit that now.

Anything else of a substantive nature that we need to deal with?

MR. DEARDEN: Costs.

THE COURT: I understand that.

MR. DEARDEN: I have an outline, Master, that is already outdated.

THE COURT: No doubt.

MR. RANCOURT: I have submissions - or not submissions - I don't know what to call it but I do have things I want to say about costs.

THE COURT: I'm certain you do and I will hear you

Submissions - Mr. Dearden

on costs, though I'll hear Mr. Dearden first because he gets to go first and then you.

MR. RANCOURT: Okay.

MR. DEARDEN: Master, I'm seeking a costs against both Mr. Rancourt and Mr. Lamontagne, and if you look at the second page of the cost outline under "Conduct of any party attempting to lengthen or shorten unnecessarily the duration of the proceeding.." you'll see that there was a little game being played here where it has to - what Mr. Rancourt - was he representing Claude Lamontagne or was he not representing him. That was a moving target throughout the cross-examination. But I get this email, once I sent Mr. Rancourt the list of refusals and undertakings, and he writes me and says "You have to contact the affiant, Associate Professor Claude Lamontagne. directly. So I do that. I send Claude Lamontagne the list of refusals and undertakings the next day, and then six days after that, Mr. Lamontagne responds that he's proceeding to obtain legal evaluation of the request. And I wrote him and said "Could you please have your lawyer contact me?" And I have received - this was back on September 24th - we're at October the 6th today. I, of course, received no response from Mr. Lamontagne or his lawyer to date. He probably didn't have a lawyer and we've got dead silence on the undertakings he gave and then he chose not to show up here.

The non-compliance with the voluntary undertakings, to me, is not acceptable. He said he was going to do it. It was over a month that

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5 has expired and, again, there is some urgency as far as Professor St. Lewis is concerned to try to get this before a mandatory mediation, to get her motion heard and not have this delayed because we were hoping to actually have that motion argued on September the 2nd and when we got the three affidavits that were filed we had no choice but to cross.

10 And I did specifically point out to Mr. Lamontagne in an email, the paragraphs that had been noted in this Notice of Motion before you that applied to him, and we were seeking costs. So I would submit that there be some cost award made against Mr. Lamontagne for not complying with his undertakings and never getting back and going
15 silent on me after he said he was going to get back. And I'm sure - well we know he's been talking to Mr. Rancourt because we've heard references to answers or non-answers coming from him.
20

The attendance fee that you see there goes one hour. I should say, Master, that in the confirmation form, I said 30 minutes - that I would be 30 minutes, and I did it in 20 minutes.
25 And the rest of the day has essentially been Mr. Rancourt, and me being here - well we were here at 10:00 o'clock and it's 4:30. So the attendance fee is just a tad off and I would submit that it should be five hours attendance fee today.

30 And I'm seeking costs of, Master, you recall the portion of the transcript in the compendium that I warned Mr. Rancourt that if he wasn't going

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to answer questions that should be answered because they were in his affidavit, that I was going to seek costs on a substantial indemnity basis. I gave him that cost warning on page 107 I think it was, in the compendium, but of course it was ignored.

And then this whole conduct of having Mr. Hickey and his friend beside him and then a third person who's name - I don't know who she was - come in that examination - or in that cross-examination and to have an article written like it was written, in tab 11 of the compendium, is just beyond belief. But Mr. Rancourt has posted - he's got this U of O Watch blog - he's posted and let everybody know that Mr. Hickey has written this article - lawyer, Richard Dearden attacks self-represented witness. And then...

MR. RANCOURT: I object. That is not on - that is not in the evidence.

MR. DEARDEN: I'm making cost submissions.

THE COURT: I'm now hearing cost submissions and I'll hear what you have to say in a moment.

MR. DEARDEN: It's totally truthful. Okay? He's got it up on his blog - that is, the Defendant, and what's important here is it's a libel action, Master. And in libel actions - and I've warned Mr. Rancourt about this repeatedly to the point where he's told me "Stop telling me". I said,

"Your conduct as the party and even if you had the lawyer the conduct of the lawyer in a libel action is evident - can be used as evidence of malice and aggravated damages and

Submissions - Mr. Dearden

punitive damages - very different than any other tort. And when you do things like this that is what happens - what a Plaintiff will put forth to get aggravated damages and proof that you're just being malicious towards them."

And so he tells everybody - he's got this student's eye view which is Mr. Hickey's blog, and provides a link to it and tells people to go read it. Absolutely no reason for him to have done that but, of course, he did. And he's got all my other emails and things posted for the public to see as well, even though they're...

MR. RANCOURT: Objection. That's not true.

MR. DEARDEN: ...not part of the party.

THE COURT: Well that's not a proper objection. I'll hear you in a moment.

MR. DEARDEN: So I set out, Master, in the box "any other relevant matter to consider in terms of the scale of costs that should be awarded", we submit that the conduct that's occurred during this cross-examination and requiring us to come back here and to spend the day on trying to get answers to every question, in my submissions, directly related to what he had in his affidavit or what Claude Lamontagne had in their affidavit.

So the amounts, I suggest, should be substantial but that they would be increased by whatever, Master, you decide would be a proper attendance fee in terms of hours for the day that we've spent before you. But my confirmation, to repeat, said 30 minutes - 30 minutes I was going

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to be and I believe I was 20. And that's my submissions on costs, Master.

THE COURT: Yes, Mr. Rancourt, I'll hear you next.

MR. RANCOURT: Well, my first reaction is that that is a mischaracterization of the situation, broadly, you know, my first broad comment.

I am acting in good faith here. I am acting responsibly. I am before a very aggressive action and I am doing what I can and I am learning as I go.

Regarding the chronology, I did say - suggest that it would be more efficient to contact Mr. Lamontagne at his University email address directly. It had no more meaning than that. Then immediately - soon after these questions that the Notice of Motion for the instant motion was filed on September 22nd, 2011. And that had a chilling effect on the preparation of answers because we were already now served with the Notice of Motion that was requiring us to be present at the instant motion. As a result of that, we - Doctor Lamontagne and I decided that I would speak to the Motion and therefore Doctor Lamontagne authorized me to do that. And in my factum and affidavit to the instant motion I specifically said those things.

THE COURT: Well the last time I checked you are not qualified to practice law and you are not qualified to appear before this Court on behalf of somebody else. Right? There are only two options. Either you appear in person or you appear through a licensed lawyer. You don't get

to send somebody else on your behalf to court.

MR. RANCOURT: Yes, Master, I didn't fully appreciate that, obviously, but that is how we decided to proceed. And I did state those things in my factum only some days after the Notice of Motion was filed which had, as I said, a chilling effect on this whole matter of getting answers and getting responses. Mr. Lamontagne has - was very stressed by this entire thing, has a very heavy teaching load this semester and was relieved to not have anything more to do with it. I am of the position that my affiant, Doctor Lamontagne should not be, in any way, be responsible for any costs. I think that would be - in my layman's terms - that would be an abuse of the system so I would argue that.

Also I note from Mr. Dearden's presentation about costs that the argument seems to be predominantly to use costs as a punishment for things which he has characterized and put in a certain way that I am not able to respond to within this process. So I feel that that is unfair to a large degree.

And also I would like to make the further submission with regards to the question of costs as follows:

Now I raised these points regarding costs in my factum on page 223 of the Record Motion. In the factum there is a section entitled "costs" and so what I'm asking is that on Charter grounds at this time I not be asked for costs. And the Charter argument that I have put in my Statement

of Defence is in paragraphs 61 to 67, and basically I will summarize it briefly. The Charter argument is like this:

I - in my Statement of Defence am asserting that there is a good chance that the University of Ottawa is funding this litigation and that I seek to know that. And if that is the case, this would be the Government suing an individual. And that is - that the case law shows for School Boards, et cetera, is that that is inadmissible and the reason that it's inadmissible is that it would allow the Government through an asymmetry of resources and means to apply gag orders to citizens who are criticising the Government or Government institutions or publicly funded institutions. And so because of the Charter right of expression and participation in a democratic society, there is an understanding in the courts that public money cannot be used to sue an individual in order to silence them with regards to their criticism. Which is precisely what is happening in the instant...

THE COURT: You're not being sued because of a criticism. You may characterize it that way but the way in which it's characterized is that you're being sued for defamation.

MR. RANCOURT: Yes.

THE COURT: Which is a limit on free speech in a free and democratic society...

MR. RANCOURT: Yes.

THE COURT: ...which is one of the few. Right?

MR. RANCOURT: And the case law with regard to

Submissions - Mr. Rancourt

this Charter argument is always in relation to defamation law suits, Master. And so this is - under this argument which I am putting forward as part of my defence....

THE COURT: Yes.

MR. RANCOURT: ...it would mean that it is unjust for a situation where the University would be funding this lawsuit and where it would be a lawsuit that the University is pursuing me by proxy, would be a situation where there would be such an asymmetry of resources and means that it would violate my Charter rights, with regards to a defamation action which is directly related, of course, to expression.

So this is explicitly in my Statement of Defence. It's also in the Plaintiff's Pleadings Brief here because we have the tab - tab two is my Statement of Defence and so if we go to paragraph 61 to 67, that's precisely where this argument is detailed. The section is entitled "Government Entity and Third Party Involvement Charter Arguments" and so on.

Now I have made strenuous efforts to find out from the University if the University is funding this. I've written directly to the President and to legal counsel. There has been no acknowledgment of my pressing questions.

THE COURT: Okay, but that's not before me.

MR. RANCOURT: Okay.

THE COURT: You may have - and I certainly have no view on that matter.

MR. RANCOURT: I'm sorry - I...

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5 THE COURT: The difficulty with these kinds of arguments is that their circular. If you wrongfully defamed someone who works for the University, why would it in any way wrong for the University to assist the person in asserting their rights to obtain compensation from the person that wronged them?

10 If, on the other hand, the lawsuit is merely a way of inappropriately muzzling free speech then, you know, it would be highly unfair that the University is funding it, but that's to put the cart before the horse.

15 MR. RANCOURT: Master, the case law is constructed in the following way:

20 The public funds cannot be used to assist someone. The person that is allegedly being defamed has a right to litigate to protect their reputation and that - but that is personal right that they have. However, the institution does not have the right to litigate through defamation against an individual...

25 THE COURT: I understand that's your argument but what I'm saying is...

MR. RANCOURT: It's the case law.

30 THE COURT: ...the fairness or the unfairness can't be determined today because that's not in front of me. I understand you've got that in your Statement of Defence. You've got a lot of things in your Statement of Defence. But each party to a litigation thinks they're right. They think the other party is wrong. Therefore, you, of course, think that you are being subjected to, you know,

financial and other abuse. But if it turns out that you're the wrongdoer, you know, that may be very different at the end of the day. I hear what you said that - you made that argument. I'm not sure what it has to do with...

MR. RANCOURT: Well...

THE COURT: ...the costs of this motion...

MR. RANCOURT: M'hmm. What I...

THE COURT: ...because there's two questions.

First of all, should costs be ordered? Costs normally follow the event. The rules are presumptive that the Court should fix costs and make them payable forthwith unless it would be unjust to do so. So a number of things arise from that. One is, whether there's any reason why costs shouldn't follow the event. Number one. Number two, is there any reason why it would be unjust to make the normal order? And number three, of course - not necessarily in that order - is the amount of costs that are being sought. There is, of course, discretion in the Court to either not award costs or to award them not payable forthwith, or to award them contingent on the outcome of another proceeding. So for example, costs can be made contingent on who wins the litigation at the end of the day in the cause. I could make the costs contingent on what the judge does tomorrow at the motion. I could make the costs payable by you but only if the Plaintiff is ultimately successful. So they could wait. But those are the kinds of orders we used to make all the time. The Rule now is a presumptive one -

5 pay as you go. If you lose a motion you are ordered to pay it - pay the costs. Again, I have discretion but there's a whole series of principles in the Rule as to how I have to exercise it.

10 Only one of those - and it's not even enunciated, is the merits of the case because I'm not judging that. And I can't judge it. It's early. Right? I can read the words. I might have a view on whether they're defamatory or not but that's not, you know, not something that enters into the picture at this point because I'm not the person deciding that.

15 So my role today is to - now that I've made this decision, is to determine what cost awards should be made, whether one should be made and against who and when those costs should be paid.
20 MR. RANCOURT: Yes. And my submission is, Master, is that I'm looking for a - an order where if the costs are ordered against me, that they - that this question, which is a central one, with regards to the Institution actually doing this action, that the costs be paid only after that question - in other words, the action as a whole
25 has been determined. That is what I would request. Because otherwise, in terms of this Charter argument that is presented in the case law, it would be unfair leverage that the institution would be applying to me early on in
30 order to get me to not defend my rights. And it would be the kind of leverage that is, I believe, unfair, because it's being applied immediately so

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5 - and by a powerful Institution in principle. So it is a discouragement against my seeking justice for myself and I think that - I believe that my defence is very strong and therefore I would prefer if costs like this one could be deferred to after the Ruling - a trial.

10 That's the argument that I am putting forward. I mean, it could be resolved very quickly if Mr. Dearden simply told us if the University is paying for this.

MR. DEARDEN: Unbelievable.

THE COURT: Well I'll hear from you in a moment. Are you done?

MR. RANCOURT: Yes.

15 THE COURT: All right. Thank you.

MR. DEARDEN: My "unbelievable" comment, Master...

THE COURT: Yes.

20 MR. DEARDEN: ...was to again, having this Defendant asking you questions, asking for legal advice. I think my submission on what you just heard, Master, is one where the Charter that he alleges he's got in his Statement of Defence, I spent a day-and-a-half arguing on behalf of Carleton University on whether Section 32 of the Charter applies to activities on campus and free speech issues in terms of anti-abortion students that wanted to display genocide images. And this argument is so far out of it in terms of any Charter application to the University of Ottawa that it's amazing to have heard him link that in to why he shouldn't pay costs forthwith for what has happened in those cross-examinations.

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Reasons for Decision - Master MacLeod

And my last point would be, when I told you there was a games going with Mr. Lamontagne in an email that he sent me which said that he was proceeding to obtain legal evaluation and then I write him to ask him to let me know who his lawyer is or have his lawyer contact me and I get no response, Mr. Rancourt has just informed the Court that he and Doctor Lamontagne decided that Mr. Rancourt would speak to the motion and "that's how we decided to proceed", which to me, that kind of contact on the part of Mr. Lamontagne who was warned that this motion was against him as well and I pointed out the specific paragraphs of the motion, and he goes silent on me for a month, and now we find out with what Mr. Rancourt just told you they had decided - that's the kind of conduct that cost order is deserving against Doctor Lamontagne for not fulfilling his voluntary undertakings. And those are my submissions, Master. Thank you.

THE COURT: Okay, so I will give you my endorsement in a moment and I'll just issue the normal disclaimer that I would be sending if I was sending it to you in writing, which is that the Reasons of the Court may undergo editing in the event of typos and so forth. But I'll give it to you in writing in just a moment. So I have added:

"The Plaintiff asked for costs. She, through her lawyer, seeks costs against both Mr. Rancourt and Mr. Lamontagne. Mr. Lamontagne did not appear today although Mr. Rancourt stated that he was authorized to speak for him and advised the Court

Reasons for Decision - Master MacLeod

that Mr. Lamontagne objected to answering the undertakings. I am advised that at one time Mr. Lamontagne had agreed to answer his undertakings but he did not do so. Mr. Lamontagne was advised that costs would be sought against him both in the Notice of Motion and subsequently. A minor costs award is appropriate for a non party failing to comply with what he had agreed to do in a timely fashion. Claude Lamontagne shall pay costs fixed at \$350 payable forthwith.

The situation concerning Mr. Rancourt is more difficult. The motion was scheduled to take one hour. Mr. Dearden completed his submissions in half that time. The submissions of Mr. Rancourt then took until 4:30 p.m. On the other hand, of course, he will be submitting to the judge on the main Motion, that the entire Motion - and therefore all of the costs - is improper and misguided. In the event that the judge agrees with this it might not be reasonable for the Defendant to be saddled with the costs for a motion within that motion. Of course, he also argues that in the action as a whole, he is the person being wronged because the action is simply an improper, and indeed, an unconstitutional attempt by the University of Ottawa to muzzle free speech and criticism.

The putative Rule under our current costs regime is a pay-as-you-go Rule in which costs are presumptively to be fixed at each stage and payable forthwith. A main purpose of this is to encourage the parties not to argue unnecessary

Reasons for Decision - Master MacLeod

5 motions and to adhere to the Rules. There is, however, the possibility that the judge hearing the main motion will dismiss it and as I stated earlier - without in any way pre-judging that issue or suggesting that as the correct result - in that eventually the judge might consider it appropriate to stay my order. Thus I am awarding costs of the motion before me. The Defendant shall pay the Plaintiff the sum of \$3,000 on a partial indemnity scale. Subject to any contrary order of the judge hearing the main motion, those costs are to be paid within 30 days.

10 In summary, an order will go as follows:

15 a. The questions, but for the Law Help questions are to be answered.

b. All questions that call for production of documents or copies of documents are to be answered in writing by October 11th, 2011.

20 c. The witnesses are to reattend at a place and time designated by counsel for the Plaintiff to answer questions under oath and to answer reasonable follow up questions on October 14th, 2011, unless otherwise agreed.

25 d. No one but the witness, the parties, their legal counsel and the Court Reporter may be present at the cross-examination.

e. Mr. Lamontagne shall pay costs of \$350.

f. The Defendant shall pay costs of \$3,000.

30 g. This order and the costs award is subject to variation by the judge hearing the main motion if she or he considers it appropriate."

MR. RANCOURT: May I ask for clarification,

Reasons for Decision - Master MacLeod

Master?

THE COURT: Yes.

MR. RANCOURT: There is a possibility that Mr. Dearden would agree to an accompanying person if I were to present that to him and explain who the person is?

THE COURT: Yes, it says that, "unless otherwise agreed".

MR. RANCOURT: Oh - sorry. I missed that.

THE COURT: Let me just make sure I did say that in the Reasons. I'll make sure that I have said that.

MR. DEARDEN: And you can certainly put on the record that I am not going to agree to anybody from Canadian Accountability Whatever Organization. I mean, that's such a loaded term.

THE COURT: All right.

MR. DEARDEN: It's the Plaintiff that was defamed here.

THE COURT: All right. Okay, so I've said "unless otherwise agreed" as I've said that earlier. I mean, that sort of goes without saying but that's - all right. I'll get you a copy.

MR. DEARDEN: Thank you, Master.

THE COURT: This will print in just a moment. There is the signed copy to do with the Motion Record. I'll just sign a copy to go to the parties. Thank you all

MR. RANCOURT: Thank you, Master.

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Reasons for Decision - Master MacLeod

ADJOURNED

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As approved by:
Master C. MacLeod
Superior Court of Justice

CERTIFICATE OF TRANSCRIPT
EVIDENCE ACT, SUBSECTION 5(2)

I, **C. Shail**, certify that this document is a true and accurate transcription of the recording of Professor J. St. Lewis v. Denis Rancourt in the Superior Court of Justice, held at 161 Elgin Street, Ottawa, Ontario, taken from digital recording Number 0411-51-20111006, Court No. 51, which has been certified in Form 1.

November 9, 2011

.....

(Date)

C. Shail

.....

C. Shail, Court Monitor

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

Plaintiff

V.

DENIS RANCOURT

Defendant

P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE MCKINNON
on Friday, October 7, 2011 at OTTAWA, Ontario

APPEARANCES:

Dearden, Mr.

Counsel for the Plaintiff

Rancourt, Mr.

Self Represented

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EXHIBIT NUMBER

ENTERED ON PAGE

Transcript Ordered:. October 7, 2011
Transcript Completed:. October 28, 2011
Ordering Party Notified: October 31, 2011

1.
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FRIDAY, OCTOBER 7, 2011

5 THE COURT: The matter of Joanne St. Lewis and Denis Rancourt.

MR. RANCOURT: Your Honour, could I get some clarifications about scheduling before we start?

THE COURT: Yes.

10 MR. RANCOURT: There - I was served two days ago with a third motion - with another motion, so I'm not clear if there are two motions to be heard today or just one.

15 THE COURT: Just a minute, Mr. Rancourt. The reporter wants to know your name, it's Denis Rancourt, R-A-N-C-O-U-R-T. Am I pronouncing your name correctly?

MR. RANCOURT: I - that's fine.

THE COURT: What do you prefer?

20 MR. RANCOURT: Rancourt.

THE COURT: Rancourt. Okay. So let's - let's try to crystallize what - what we're going to do today.

25 I've read the material. Mr. Dearden has a motion to appoint Mr. Chadwick or Mr. Mullington as a man - as a mediator to - to look at the - the defamation issue and try to resolve it. You're opposing that on the basis that you don't feel that - Chadwick is - Chadwick is too expensive, I don't know what your position is on Mullington. And - but in support of that, Mr. Rancourt, you - you've filed affidavits. All right. And specifically in the affidavits raised issues that were - that were appropriate upon

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2.
St. Lewis v. Rancourt

5 which to cross-examine you. Cross-examination
proceeded. Certain questions were refused to be
answered. Yesterday, over the course of almost an
entire day, you appeared before case management
Master McLeod and he made - he gave a decision
requiring that certain answers be made. There's one
exception and that's the - communications with -
communications with Law Help. And my question to
10 you is very simple, in that he's ordered that those
questions be answered and that they stem from your
affidavit evidence in - in support of opposing the
main motion, how can we hear the main motion today?
That's my question. Yes.

15 MR. RANCOURT: I would like to answer as follows.
I'm self defended and my understanding of the rules
of procedure and of case law and so on is evolving
as time goes by and as I study these questions, and
I have - want to - I would like to present arguments
that the original motion should be quashed
20 irrespective of all of these answers and these
issues and I - because I believe there - the reasons
for quashing the original motion are very strong and
unambiguous, the rules of procedure are being
broken, the - there - I have - I have several
25 arguments here that I would like to present. I am -
I would like to argue that - for example, the
questions in the matter related to the cross-
examination were related to things such as the
independence of the witness, the expertise of the
30 witness, my assets and so on, and I would argue that
this motion can be quashed even if my - Doctor
Lamontagne, the affiant was a...taking orders from

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me and even if I was a millionaire, and even if he had no expertise at all, in all of the cases it wouldn't make any difference in terms of the arguments that I would like to present today as to why this motion is untenable at law. In terms - and I have three arguments in that direction. And I believe that they're prima facie in a sense that they - you don't need all of that cross-examination evidence in order to clearly see, I believe, that this motion is not tenable. So it contradicts - on its main points, on its main request, it contradicts...

MR. DEARDEN: Excuse-me, Mr. Rancourt. Excuse-me, Mr. Rancourt. Your Honour....

MR. RANCOURT: I'm being interrupted, Your Honour.

THE COURT: Yes, you're launching to the main motion is I think is - so Mr. Rancourt, let me just hear from Mr. Dearden on the basis of whether, in his view, the main motion can be heard today, because that's - that's really what's before me at this point. That's the issue I have to decide. You want to argue the main motion, you say it's - it doesn't matter what happened with case management Master McLeod, whether - it doesn't matter, et cetera, so - obviously there's some dispute as to whether that - the main motion can be argued. So let's hear from Mr. Dearden, because it is his application to have it adjourned. So - and then you'll get your opportunity to reply, okay.

MR. RANCOURT: Yes. I....

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MR. DEARDEN: Your Honour, I handed a compendium to Madam Registrar. I'm not sure if that was breaking news.

THE COURT: Your Honour....

MR. DEARDEN: Your Honour, if you turn to tab 13 of the compendium you have the contested motion confirmation form which sets out the two matters that are before the Court this morning. The first is the fact that this is a contested adjournment and then secondly I have filed on short notice a motion to strike out a notice of examination that the defendant served on the plaintiff to attend for discovery notwithstanding that the mandatory mediation motion is all about holding a mandatory mediation prior to exchange of affidavit of documents and of having examinations for discovery, but if you would permit me, Your Honour, to just give you a three minute backdrop as to how we are here today and then I will address the adjournment and I will also address why there should be no argument about - it's really like a motion to strike that he's - he's - Mr. Rancourt is submitting the Court should hear today and I submit this is completely improper, there's nothing before the Court - because the only thing he's filed that raised these new issues, which I got last week, was within Master McLeod's refusal's motion, there's nothing before this Court on the main motion to - to argue that I've violated the rules and all these other things that he wants to address you. But let me first give you the backdrop as to how we got here in three units.

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St. Lewis v. Rancourt

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Professor St. Lewis, who is with us today, sitting here in the first row, is a professor at the University of Ottawa's Common Law faculty and her life work is dedicated to the promotion of the quality rights including racial equality. The defendant Mr. Rancourt is a former physics prof at University of Ottawa who the university terminated, amongst other reasons, because he told his students that he was going to give them all A+ at the first of the year and he's in a labour grievance over that termination now. He also, as you'll see at tab three of the compendium in his Facebook page, describes himself as an anarchist and what he's done on his blog, has published a number of defamatory statements about Professor St. Lewis, one of which is that Professor St. Lewis is the house negro of Allan Rock, the president of the University of Ottawa, and a number of other things that I'm not going to waste time with because we have limited time today, but they're the most egregious defamatory statements that I've seen in my 32 years of practice in the area.

So when I read his statement of defence and realized that I'm dealing with a self represented anarchist, I decided that we needed mandatory mediation to settle this or at least attempt to try to settle this action as soon as we can and it had to be before a skilled mediator and somebody that had knowledge of liable law, and that's why I asked for Former Regional Senior Justice Chadwick to be that

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mediator. If that doesn't happen, if it doesn't settle my position on the argument of the mandatory mediation motion is going to be - this action is going to devour an enormous amount of the precious Court time to hear things, and yesterday, before Master McLeod, was the poster child of how long and how much Court resources are going to be eaten up with this self represented defendant. The confirmation yesterday, Your Honour, as an aside, I said I could deal within 30 minutes, I did it in 20 minutes, we started at 11:30, we walked out at 10 after five. All of the other time used by the defendant and the Master trying to explain to him how procedures worked and et cetera, et cetera. So that's all I'm asking for is a mandatory mediation. I asked Mr. Rancourt if he agreed....

THE COURT: Do you have the - just query, Mr. Dearden, do you have the right to name the mediator though?

MR. DEARDEN: I - the - in my - there is a rule and I know there is a rule that says that the parties have to consent, my position is going to be there can be inherent jurisdiction of the Court to appoint somebody who is skilled and knowledgeable in the area of law in that particular case. But it may not be - and you know, that actually - I mean to me that is the best choice possible in this city, but it doesn't have to be and it's not - it's not a motion breaker if you will. It's get - it's getting a mandatory mediation held.

THE COURT: But as I understood, just reading Mr. Rancourt's motion record, he's in favour of

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mandatory mediation; he just doesn't want to have to pay for Mr. Chadwick.

MR. DEARDEN: No. No, no, he's not in favour of mandatory mediation before he examines my client.

THE COURT: I see.

MR. DEARDEN: And I don't want that to happen, she doesn't want that to happen, I want it dealt with now, because if we do that, Your Honour...

THE COURT: Okay.

MR. DEARDEN: ...I know - I know....

THE COURT: All right. So in other words, he'll take mediation but after he has his trial sort of?

MR. DEARDEN: Yes.

THE COURT: Yes.

MR. DEARDEN: Now, he has a cost issue too, he wants to do everything for free and he's - he wants a Law Help mediator to do this for free and that won't be the type of mediator, in my submission, that should actually be mediating this because it's going to be a tough mediation. But at any rate, that's where we are. I asked him, he's refused, so we filed on August 18th, Your Honour, a notice of motion that you'll see at tab four of the compendium. And that's the mandatory mediation motion, and you'll see - you'll see relief in the first paragraph is that we have the mandatory mediation prior to the exchange of affidavits and the conduct of examinations for discovery. And that was returnable on September the 2nd, Your Honour. And in opposition to that motion, Mr. Rancourt served two affidavits he swore on August 25th, so he - he swore two affidavits, August 25th and 26th and Mr.

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5
Lamontagne, another prof at U of O swore an affidavit on August 26th and so I advised Mr. Rancourt at tab five that I had a right to cross-examine and that we had to adjourn the September 2nd hearing day. So if you turn to tab five of the compendium, Your Honour...

THE COURT: Yes.

10
MR. DEARDEN: ...you'll see at the bottom, August 30th, 2011, at 3:27 I say to Mr. Rancourt,

15
"We have a right to cross-examine you and Professor Lamontagne and that is why September motion - 2nd motion needs to be adjourned. Please confirm you're not contesting the adjournment so that we can conduct cross-examinations next week."

20
Now, here - right above that his reply at 3:41 p.m. that day is,

"I am not contesting an adjournment of the motion so that we can conduct cross-examinations."

25
And those cross-examinations are obviously not over, Your Honour, because Master McLeod has ordered to read attendance on October the 14th. So I - in the - just finishing that tab five, I informed Mr. Rancourt that we will inform the motion coordinator the adjournment is not contested, so it got adjourned from September the 2nd to today. Okay.

30
September the 6th is when we held cross-examinations, Your Honour, there were numerous refusals and we brought the refusals motion that you

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see at tab six of the compendium, so that was what Master McLeod dealt with yesterday.

MR. RANCOURT: Excuse-me, we have a ruling that's fairly consistent that pretty well summarizes what happened with regards to the cross-examinations and so on, and I wonder if all of this background is necessary.

MR. DEARDEN: It's absolutely necessary, Your Honour, because it's - this is the setup as to why there should not have been a refusal to adjourn today's proceeding.

THE COURT: I think what it's really coming down to, Mr. Rancourt, is whether you should have simply agreed that the main motion be adjourned pending the completion of the cross-examinations, to which you originally agreed, now that Master McLeod has ordered that answers be given. So I think that - and really, maybe it involves costs against you for not - for not agreeing to having today's motion adjourned, am I correct? Yes.

MR. DEARDEN: I'm going to seek those and I warned him and in tab five I warned him,

"In the event you oppose an adjournment of the motion, I'm putting you on notice that I will be seeking costs on a substantial indemnity basis payable forthwith."

He gave - he told me he's not contesting the adjournment so we can conduct cross-examinations, he told me that on August 30th and today he resiles from that non-contestment [sic], and I - I don't get it myself, but anyway - to finish the background

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5 here, how we got here, so we filed the notice of
motion - the refusal's motion which is at tab six,
and tab eight we've included Master McLeod's
decision, Your Honour, of yesterday where if you
look at the last page, paragraph 25, Mr. Rancourt
has to produce - Mr. Rancourt and Mr. Lamontagne
have to produce all documents or copies of documents
that are to be answered by October 11th, so that's
10 next Tuesday and then next Friday we - we conduct
the cross-examinations of both of them on the re-
attendance that's been ordered.

15 And tab nine, Your Honour, in terms of dealing with
just the adjournment because this - this - just the
adjournment part as opposed to setting aside the
notice of examination for discovery as an abuse, at
tab nine, September 28th at 10:38 I - I said,

20 "The motion to compel you and Professor
Lamontagne to answer questions asked during your
cross is scheduled for October 6th. As a result,
it will not be possible to argue the October 7th
motion to compel you to attend a mandatory
mediation prior to the exchange of affidavits of
documents and the conduct of examinations for
discovery. The October 7th motion must be
25 adjourned and the earliest date available is
December 7th, please inform me whether you
consent to the adjournment."

30 And it's actually - I made a typo there, it was
December 1st, which - which is what the contested
adjournment seeks is December 1st. So I asked him
to inform me if he consents.

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5 Tab 10, first of all you'll see - if you look at tab 10, Your Honour, I'm going to take you to parts of pages one and two of this email string. At the bottom of the page Mr. - or actually go to page two if you could in tab 10 of the compendium. There's an email from Mr. Rancourt, September 28th, at 11:11, it says - when I ask him if he consents to adjourning the October 7th motion, he says,

10 "There is no motion scheduled for October 7th, please clarify."

Above that you see I say,

15 "The main motion regarding the mandatory mediation was adjourned, with your consent, to October 7th."

Which is the tab we just looked at. He comes back to me on - 11:59, says,

20 "I'm in error; I never consented to an October 7th date. I also never informed about an October 7th motion hearing date. Please verify your records. You will be able to confirm I was never made aware of the October 7th motion hearing date."

25 Which is completely wrong. Mr. Rancourt, can you sit down, please? Thanks. So I write him and give him the history we had of the adjournment to October 7th, so we point out on the first page of tab 10, Your Honour, that on August 30th at 3:27 I wrote what's there. Then I say in the second paragraph,

30

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"You replied by stating "I'm not contesting an adjournment of the motion so that we can conduct cross-examinations."

5 And then I replied on August 30th, 3:58, that we will inform the motion coordinator, which we did, and this was set down for today. The fourth paragraph in my email of September the 28th at tab 10 in the compendium I say,

10 "We are adjourning our motion to obtain an order for mandatory mediation to December 1st, which is the first available date, do you consent?"

15 Tab 11 - tab 11 - tab 11 is - is actually the notice of examinations, tab 12 I meant to take you to, Your Honour. Tab 11 - 12, September 28th, Mr. Rancourt writes me and says in paragraph six,

20 "I don't agree to an adjournment of the October 7th motion since it's possible that it can be ruled upon depending on the results of the October 6th refusal's motion or independent of the results of October 6th."

25 Your Honour, the cross-examinations, as you noted, are not completed. He consented to an adjournment so we could conduct cross-examinations. It was the refusals that delayed the hearing of the mandatory mediation, because we had to bring the motion that was heard yesterday. The plaintiff Professor St. Lewis is entitled to a complete evidentiary record on the opposition that Mr. Rancourt has put in
30 through those three affidavits that are still subject to cross-examination. And not only that but

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5 that - as of last week, he was proclaiming he wasn't even aware of the October 7th hearing today, but yet he insists that we should proceed today when last week he wasn't even aware of it and he was resisting that there was going to be anything heard today. But he is resiling on saying we're going to adjourn and that's not the main reason why I'm arguing there has to be an adjournment. The main reason is the evidence isn't in yet, the supplementary record 10 would have to be filed and that hasn't obviously been done and nor have we prepared a factum on this mandatory mediation yet because the evidence isn't complete yet. So that's where we are on that, Your Honour.

15 Mr. Rancourt wants you to nevertheless rule today that there's a fatal flaw in the motion, in the mandatory mediation motion, but as I said at the outset, he hasn't filed any separate motion to cut out a hearing on the full evidence of the mandatory 20 mediation and short circuit it somehow. He hasn't done that. What he - the first time I saw that was when he filed this two inch document with Master McLeod to oppose the refusal's motion; that's where it comes up in, but it doesn't come up in the main mandatory mediation motion as a separate motion that I would cross-examine on some of the things that he has in that brick there that he used to oppose the refusal's motion. So that's not even before the 25 Court. But as I said....

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MR. RANCOURT: I object, Your Honour. That characterization of it not being before the Court is incorrect. The....

THE COURT: You'll have your opportunity to respond, Mr. Rancourt, as soon as Mr. Dearden has completed his submissions.

MR. DEARDEN: I meant in terms of separate motion that would be heard to - to ask the Court - to ask this Court, as opposed to what's before the Master on a refusal's motion, to not even bother having a full record and to not even worry about the continued cross-examinations that have been ordered by Master McLeod. He doesn't have that as a motion before the Court. He's just asking you to do it today. And I'm not ready to argue that. I'm not ready to argue that. I haven't cross-examined him on the affidavit he filed dealing with those issues because they were filed in a refusal's motion. So there's nothing separate before you, which in my submission, has to be before you, Your Honour and that - and to sum up on that issue, I submit the Court should have a full record; that hasn't been completed yet and a supplementary record is obviously required, and a factum is required as well, and we're not there. So we've asked that - that the - today's matter be adjourned because of the refusals that we got on September the 6th. Today could have proceeded if we got the answers that we wanted on September 6th, but that didn't happen, we didn't cause that delay and therefore, we submit it should be adjourned.

Now, after you deal with that, Your Honour, I do have submissions on the notice to set aside the notice of examination for discovery, but that's a separate motion.

THE COURT: Okay.

MR. DEARDEN: Thank you.

THE COURT: Mr. Rancourt, I want to hear you only on the issue of the adjournment, I don't want - and I don't want you to argue the main motion here; it's not what's going to happen. Why are you opposing the adjournment given the fact that Master McLeod has ordered you to answer questions, based on the affidavits filed?

MR. RANCOURT: Yes, Your Honour. As I stated earlier, my understanding of the case and of the law and of the rules of procedure is increasing every day and so my management of my defence is changing as we go, and I feel like I'm under a lot of pressure, things are happening very quickly, so that is the reason that some of this confusion has occurred, for example, with regards to the motion date, it was not in an email, it was in an attached document, which I didn't look at and write in my agenda at the time and it caused some confusion and so on. So things like that are accidents and are bound to happen sometimes.

With - am I - would it be appropriate for me to comment on Mr. Dearden's backdrop of the case, because I do object to how I was described.

THE COURT: Yes, of course. You're responding to his submissions as to how you came to today, how he

cannot comprehend why you would not consent to this being adjourned, given that you filed affidavits, you were being cross-examined, you've refused to answer certain questions and Master McLeod has ordered that they be answered, and therefore, this motion must be adjourned pending the completion of that examination. So you can answer those submissions.

MR. RANCOURT: I will try to target that and leave aside the anarchism comment. In my original motion record, in response to the first motion, I did explicitly argue that this motion should be ruled out on the basis that rules were being broken, rules of procedure were being broken and on the basis that it was improperly being used as a proxy for a motion for interim injunction in a defamation lawsuit. And I - and other arguments as well. The majority of my arguments were in the original response to the original motion. I have now sharpened them and I think I would be able to present them succinctly and so I'm asking to be allowed to do that.

Now, the - the arguments that I want to present in order for this motion to be quashed are not based on evidence, they're simply based on the rules and case law and what is being asked in the original motion precisely and how it's inconsistent with the rules and case law. It is not about the evidence. That's what I would like to present today.

THE COURT: But that's - no, what you want to do - what you're telling me is you want to argue the main motion. You want this Court to declare that Mr.

Dearden's motion to have mandatory mediation should be dismissed?

MR. RANCOURT: Yes.

THE COURT: That's - and I'm saying that can't be done until the full record is before the Court. The full record would include the cross-examinations of the affidavits you filed in response to that very motion.

MR. RANCOURT: But....

THE COURT: I mean - that's....

MR. RANCOURT: Yes.

THE COURT: That's the proceeding.

MR. RANCOURT: Yes.

THE COURT: You can't just - you can't just say "Well, you know, this is getting pretty damn complex and really all I want is a hearing, so let's have a hearing." That's not the way things work. You have to have a full record, based upon the pleadings, the - the nature of the notice of motion, the nature of the - of the relief that's being sought and....

MR. RANCOURT: Your Honour....

THE COURT: You know, it's not - you're not going to Carnac [ph] you know, just - it kind of gives you the answer without not the question.

MR. RANCOURT: I understand, Your Honour.

THE COURT: Yes.

MR. RANCOURT: My idea is that the Court - one of the main goals of the Court is to be efficient and to save costs, and I believe that the - if I can make these arguments about the un-tenability of the original motion, it will do exactly that, it will stop another cross-examination, it will completely

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eliminate this whole problem and it will explain, I believe, in some - with some clarity, why this original motion was - was....

THE COURT: Well, again, you want to argue the main motion. Again, and let me just....

MR. RANCOURT: Well, I'm saying that it's *prima facie*, like it should be - it will be clear that it is violating on the two main points of the motion that are being requested. It directly violates two rules of procedure.

THE COURT: All right. Mr. Rancourt, let's say - because that is your - that's going to be your answer to Mr. Dearden's motion to have mandatory mediation...

MR. RANCOURT: That - that....

THE COURT: That's going to be your...

MR. RANCOURT: One answer, yes.

THE COURT: ...answer, all right. If you are right and a Court ultimately agrees with you, you're going to be entitled to all your costs.

MR. RANCOURT: I was only trying to save the Court....

THE COURT: Okay, no - so that's - that's how you'll be - that's where you'll be made whole...

MR. RANCOURT: Yes.

THE COURT: ...if you're right. Okay. But right now, you're in - you're midstream, you're midstream here. In response to his motion you filed material, the law provides that when you file material, there's an absolute right to cross-examine on that material and the cross-examination was frustrated, Master McLeod found, and has ordered that certain

5 other answers be given, and that - and so - that
declaration of law must be adhered to before the
main motion can be argued, that's the point of this
morning's adjournment. It's premature to hear the
motion in the absence of those cross-examinations
being completed. I understand your argument, you're
saying they're all irrelevant, we could really just
argue this on - on a reading of the rule. But
that's not the way its proceeded, it is proceeded on
10 the basis of you filing material. And once you've
taken that step, the other side has this right to
cross-examine and have the full record before the
Court. At the end of the day, a judge may say, "You
know what, it's all irrelevant that stuff, I agree
on its face, you know, Mr. Rancourt is right and
should be entitled to all his costs." But that's at
15 the end of the day. This ain't that day.

MR. RANCOURT: Yes. Your Honour, I'd just like to
make one more...

20 THE COURT: Yes.

MR. RANCOURT: ...comment. In the ruling of
yesterday, the - the Master in paragraph nine said,

25 "The issue before me is whether or not the
questions must be answered in relation to the
evidence that the defendant himself has tendered
in response to that motion. Obviously if the
judge dismisses the main motion, without the
need to consider the affidavit evidence or the
cross-examination, that decision may render any
order I make today moot. In that event perhaps
a judge will stay the order and relieve the
30 defendant from providing the answers."

THE COURT: Uh-hmm.

5 MR. RANCOURT: So the - in yesterday's proceedings, I attempted to make this same argument, that it was so obvious that this original motion was ill conceived, that I should be allowed to make that argument and for the Master to rule on it, and the Master instead said "Well, that's precisely the argument you'll be able to make tomorrow." And so since we can make it tomorrow....

10 MR. RANCOURT: Sorry, sorry, I object, Your Honour, Master McLeod never said any such thing.

MR. RANCOURT: Well, he did say something similar...

THE COURT: Well....

MR. RANCOURT: ...to that, I may not have the exact words.

15 THE COURT: What he's leaving open - what he's leaving open is the possibility that a judge today, he didn't know who the judge would be, but the judge today might - might be persuaded by your - your argument and hear the main motion. That's what he's holding open.

MR. RANCOURT: Yes.

THE COURT: But I guess you drew the wrong judge, Mr. Rancourt, because I'm not going to hear the main motion.

25 MR. RANCOURT: Now....

THE COURT: All right. I don't know how many ways I can tell you that, but it would be inappropriate and I think unjust to all the parties and to the - to the search for the truth, which - which really this is all about, to simply cut all this short, forget the right that's been given to them to complete their cross-examinations, get other answers and just

30

say "No, we're going to hear it." That would be wrong I think.

MR. RANCOURT: Yes. Your Honour, I hear your ruling and I understand it, and I authentically wanted to present this position as a possibility and I did and I want to thank you for that opportunity.

THE COURT: Thanks, Mr. Rancourt. So the first endorsement I'll make - and you can - you can be seated, Mr. Rancourt. But with respect to the motion record, the plaintiff - I think December 1st was the date that was convenient to - is that convenient to you, Mr. Rancourt, for the main motion to be argued?

MR. RANCOURT: If I may, Your Honour, I'd like to point out that with regards to dates and times - estimated times of the procedures and this form that needs to be filed before motions and so on, I've never been consulted and the forms have been filed by Mr. Dearden unilaterally at the last minute....

THE COURT: All right. Why don't I just say on a date to be agreed to by the parties or....

MR. DEARDEN: Now, Your Honour, what you just heard isn't correct, but....

MR. RANCOURT: It is correct.

MR. DEARDEN: As you know, when we - when - resources over here are limited and we - that's for a two hour slot that was available, it was the earliest date that we could get. If Mr. Rancourt has ever wanted to have a different date, all he needs to do is call me up, but we have to book the slot and that was two hours, and my concern here, Your Honour, is two hours, in light of what I witnessed yesterday....

THE COURT: You'll need a lot more time.

MR. DEARDEN: Yes. But there is some urgency to this, Your Honour. I mean there's no doubt that this should be argued in a day and Mr. Rancourt should simply be told, "Look, you've got three hours. Mr. Dearden has three hours. But this can be argued in a day." It doesn't need to eat up anymore Court time than that. But there is urgency in this, Your Honour, that's been delayed by what came in in opposition - his evidence and what happened at the crosses in that - this is weighing heavily on the plaintiff and she wants to give this one good shot at settlement and that's why she wants mandatory mediation, not examination for discovery where there will be - no doubt we'll be back before the Master a number of times, so there is urgency and - but that was the earliest two hour slot we could get, Your Honour, and I don't know what a special appointment would be, you know, for a day - I don't know what the calendar looks like.

THE COURT: Perhaps the registrar can find some dates, but in the meantime I'll just endorse the....

MR. DEARDEN: If you could, because I - you can see that we'll be going back and forth, Your Honour, as to what isn't good or bad, and I just would like if we could resolve the date today.

REGISTRAR OF THE COURT: For a full day?

MR. DEARDEN: Full - if His Honour agrees that....

THE COURT: Yes, I think it needs a day. I mean you took a whole day yesterday just to argue that other stuff.

MR. DEARDEN: Yes, I did mine in 20 minutes.

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MR. RANCOURT: That's not correct.

MR. DEARDEN: Read Master McLeod's decision, Mr. Rancourt.

REGISTRAR OF THE COURT: January 24th, 26th or 27th is available full day.

MR. RANCOURT: Sorry, 24....

REGISTRAR OF THE COURT: 24th or the 26th or the 27th.

MR. DEARDEN: There's nothing earlier?

REGISTRAR OF THE COURT: For a full day.

MR. DEARDEN: Is there anything you can do about that, Your Honour?

THE COURT: Is there any way that this could be expedited?

REGISTRAR OF THE COURT: Let me call somebody else that would be able to do that.

MR. RANCOURT: These dates conflict with an arbitration hearing that I must attend.

THE COURT: Yes. I think it should be heard earlier than that in any event, Mr. Rancourt. We should try to get this on quicker than later. Do you agree that it should be heard quicker rather than later, I mean just putting this off and off is not in anyone's interest?

MR. RANCOURT: Well, I agree.

THE COURT: Yes, okay.

MR. RANCOURT: Yes.

THE COURT: We're going to try and get an expedited day.

REGISTRAR OF THE COURT: But the month of December is agreeable?

MR. DEARDEN: The month of November is agreeable.

THE COURT: Anything in November?

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REGISTRAR OF THE COURT: November 15th.

MR. DEARDEN: Yes.

THE COURT: November 15th, Mr. Rancourt.

MR. RANCOURT: I'm - yes, I'm concerned about this new cross-examination which will occur on October 14th. I'm hoping that it will not be expanded into other things.

THE COURT: Well, it will be done October - it's in a month in advance to the main motion, so that - lots of time to get a transcript and prepare argument, file factums, which is what will have to be done.

MR. RANCOURT: Yes. So that was my concern, and the date is?

THE COURT: November 15th.

MR. RANCOURT: All day November 15th.

THE COURT: Yes.

MR. RANCOURT: Yes, that works for me.

THE COURT: Good.

REGISTRAR OF THE COURT: At 10:00 a.m.

MR. DEARDEN: Do we know who? Do they know who?

REGISTRAR OF THE COURT: No.

MR. RANCOURT: Originally, the earliest date we could do it was December 1st.

THE COURT: No.

MR. DEARDEN: No, that the Court was available.

THE COURT: Yes. What he's saying - when you phone the trial coordinator's office and say when could we get - when is the next available motion date, he was given December 1st, okay - what we've done is intervene, in other words, I as a judge can intervene and say "This is an important matter, we

need a day, just get it for us." So they've done that.

MR. RANCOURT: Okay.

THE COURT: Sort of like bumping someone in a hospital bed, you know.

MR. RANCOURT: Okay.

THE COURT: All right. Here's what I've noted on the back of the main motion record,

"This motion cannot be heard today because of the order of case management Master McLeod made yesterday, which entitles the plaintiff to complete cross-examinations of affidavit evidence filed by the defendant in this motion. The motion shall be rather lengthy, judging by the history of this case. One day should be set aside for argument. A peremptory date of November 15th, 2011 is scheduled, commencing at 10:00 a.m."

MR. DEARDEN: So Your Honour, the second matter is the motion to set aside the notice of examination for discovery that was recently served on the plaintiff. If I could take you to tab four of the compendium, just so you see how this evolved. So you have the August 18th motion for mandatory mediation, which seeks relief of prior to the conduct of examinations for discovery. You know that it was returnable September 2nd, you know that the defendant consented to that, you know that the cross-examinations occurred September 6th and we know that a refusal's motion - which is - you have at tab six of the compendium, was - was served and filed September 22nd. So he knew all of this - and

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before he served this notice of examination for discovery.

At tab 10 of the compendium I'm - this is Septem -
the morning of September 28th, I'm asking in the
fourth paragraph Mr. Rancourt if he will agree to
adjourn the motion to December the 1st, mandatory
mediation motion, which wants to hold - have that
mediation held before discoveries. I ask him that.

Tab number seven, Your Honour, later that day - this
is the response I got to my asking that there be a
consent to adjourn today's motion to December 1st,
the response being a notice of examination requiring
the plaintiff to attend for examination for
discovery November the 8th.

Tab 11, Your Honour, of the compendium I immediate
write an email to Mr. Rancourt about the notice of
examination, so this is tab 11, an email that is
sent at 4:24 in the afternoon, and I advise him that
he is well aware,

"I have a pending motion to compel you to attend
mandatory mediation prior to examinations for
discovery being conducted. Accordingly,
Professor St. Lewis will not be attending any
examination for discovery prior to a decision
being made on her mediation motion. Your
refusal to answer questions directly related to
matters contained in the affidavit you swore has
unnecessarily delayed the argument of the
mediation motion. I am requesting that you
withdraw this notice of examination if I'm
required to seek to have the notice of
examination set aside will otherwise...my

client's non appearance at an examination pending a hearing of her mediation motion. I am notifying you that I will seek costs against you on a full indemnity basis both payable forthwith."

At paragraph - at tab 12, Your Honour, Mr. Rancourt responds in paragraph four of his 6:15 p.m. email, September 28th,

"I do not withdraw the notice of examination for discovery."

So tab 14, rather than play a game, Your Honour, where November 8th comes and goes and he obtains a certificate of non-attendance, I thought the best way to deal with this would be to deal with it today, because we did have a time slot open, so on short notice I've asked that it be dealt today rather than as I say, having the plaintiff not show up on November 8th and then we're going to be in a motion that's going to further delay things, you know, a couple of months from now.

And the basis for the motion to set aside the notice of examination, Your Honour, is rule 25.11(c) which is you can strike out a document on the ground that it is an abuse of the process of the Court. And I have one - one decision which you find at tab 15 of the compendium, Vale v. Rohan [ph], a decision of Justice Sachs. And it's really the principle that you see in paragraphs 33 and 34 of the decision.

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In paragraph 33, and then it's numbered 2, paragraph number 2, the - Justice Sachs says,

5 "The examination of Mr. Burnbaum was brought in need of the set aside motion, first, as already indicated, the examination was apparently justified by answers to improperly asked questions. Second, the plaintiff insisted on proceeding with that examination before the Court had been given a chance to rule on the propriety of - propriety of that examination where there was no urgent reason to do so and when it was clear that the defendants wanted to bring a motion to have the issue determined - this conduct cannot and should not be permitted. The use of any fruits obtained as a result of this conduct should also not be permitted. Both these actions of the plaintiff were an abuse of the rights of the litigant to examine witnesses in aid of a motion. The fact that the plaintiff is self represented cannot excuse his actions in abusing the Court processes available to him, particularly given the fact that the plaintiff himself is a lawyer."

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Simply put, Your Honour, our submission is we have a pending motion, there's been a lot of time spent on putting a record together, cross-examinations, a motion before the Master, we're before you today on an adjournment of the mandatory mediation motion, Mr. Rancourt was - you know, I didn't just bring - bring this notice of examination motion out of - you know, I warned him, I asked him to withdraw it, he refused, we're here today and if we don't - where are we left, you know, November - we're arguing November 15th, to do a mandatory mediation prior to examinations for discovery. That he's got to - a notice that he's served, knowing that we have that - we're seeking that relief, to do it November 8th,

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5 and that's an abuse in terms of how you - and the
term was used and applied by Justice Sachs in the
Vale [ph] decision and it just shouldn't be, but I
don't want it to just sit there, so that's why I - I
10 thought the best way to deal with it is early and -
and not play a game, like I said, where we don't
show up, he gets a certificate of non-attendance,
brings a motion to say that - you know, we've
violated a notice and deal with it now, and to me
the submission is quite simple, he knows there's a
15 pending motion, there's been a lot of work done on
this case, and it should - it should take its course
and then we'll deal with - I mean let's get - we
need a decision on whether there should be a
mandatory mediation before examinations for
discovery. There's no prejudice to him, there's no
urgency whatsoever to get on with the examination
for discovery, so deal with the motion that's in
there since august 18th.

20 Other than cost submissions, Your Honour, that's my
submissions on setting aside the notice of
examination for discovery.

THE COURT: Mr. Rancourt.

25 MR. RANCOURT: Your Honour, I would like to refer
back to the original notice of motion of Mr. Dearden
for the first motion and I would like to first
introduce by saying that these most recent - this
most recent motion is the first time I've heard that
30 the goal of the original motion was to block
discovery. In fact, when - when I look at the
original motion, there are only three things that

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were requested. One, an order that the mandatory mediation of this action take place during the month of September. It was felt that - I'm stopping there at point one, I'll continue later - it was felt that it was absolutely essential that this motion be heard in September because that was the beginning of the semester, and then - and prior to the exchange of affidavit, of documents and conduct of examination. What that meant was that there was some effort to get discoveries, what that paragraph meant was that the September date would naturally be prior to the discovery process. It wasn't, I don't believe, meant to exclude discoveries until this entire motion was dealt with.

THE COURT: Can I just tell you, Mr. Rancourt, it's quite apparent to me that you're an intelligent man but you are not a lawyer, okay. Now, what this is saying - the relief sought is clear to any lawyer who would read it that what they want is they want a mandatory mediation prior to any examinations for discovery and prior to any affidavits of documents. Okay. So that's what they want. They want to avoid the normal Court process and get a mandatory mediation, so that's being sought and by serving a notice to examine Joanne St. Lewis, while that motion is outstanding, it frustrates the whole intent of the motion, all right, so that's the point.

MR. RANCOURT: Okay. I'd like to make my response.

THE COURT: Yes.

MR. RANCOURT: I'd like to first point out some elements of the chronology. The pleadings were

closed on Octo - on August 5th of this year, August 5th is when the reply was served. On August 18th, in other words, very soon after that, this motion was filed immediately almost, but on August 10th I had - I had sent to Mr. Dearden a tentative discovery plan. I had announced on August 10th that I was interested in doing discovery and I had said many times in emails to Mr. Dearden that I see no conflict between proceeding with discovery and dealing with mandatory mediation. In fact, the case law and the documents that I have read from the Attorney General suggests that discovery can be very beneficial to mediation for various reasons, so it has - I have never refused mandatory mediation, I felt that this was too fast, compared to the six months that one should be allowed to get one's bearings and to start to see what's going on. It was done immediately after the - the pleadings were closed and I - and it was done after I had initiated my desire by actually sending a tentative discovery plan and asking for discussion, all discussion was refused, it was never admitted, and - so that's the early chronology of this - of this problem with regards to - you see - I see discovery - initial discoveries and so on and successful mediation as being complimentary, and I've always said that. And I don't understand this position that one has to exclude discovery.

As a further point of chronology, Your Honour, the notice - my notice of examination was served on September 28th and it was suggesting a date for

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discovery examination of November 8th, that gives 41 days, so there was no need to violate the rules in order to put this motion forward on two days notice. There was 41 days there where it could have been done properly in time to avoid the November 8th suggested date for discovery.

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In addition to that, in my note to Mr. Dearden where I sent him the notice of examination, I suggested that I was open to changing the date if - if that - he needed that to accommodate his client, at some time in November. Well, if you go to the end of November, that's an additional 22 days, so we're up to 63 days now between when I served the notice of
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examination and when there could have been the examination. So there was plenty of time to not violate rule 37.07(6) which requires that a motion that is on notice be - that the notice of motion be filed seven days - at least seven days in advance.
20
And so I feel that that rule has been broken and that my rights in that regard have been violated.

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The other relevant rule is rule 37.01 which clearly says that motions, unless there are good reasons, have to be on notice. I could read the rules if that is appropriate or helpful.

THE COURT: I'm aware of that rule, Mr. Rancourt.

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MR. RANCOURT: Okay. So that is my first comments about chronology and the rules being violated regarding this motion. Secondly, I feel that I have procedural rights to discovery. These stem from the following: I sent the tentative discovery plan on

5 August 10th and I did it pursuant to rule 29.1.03
and I made several attempts, several email attempts
- I didn't bring all the emails today to discuss the
discovery plan or to have some sense of - if it was
accepted or not and so on. And then following that
there was no movement - and at the same time, in my
factum for the original motion, I presented that I
felt that discovery and a successful mediation were
complimentary and would only help. So - and that is
10 still the principle that I believe and so I then
served an affidavit of documents on September 21st.
I duly served it following rule 30.03. Following
that I duly served a notice of examination for
discovery, according - on September 28th, seven days
later, and that was following rule 31.04. And so I
15 believe that it is my procedural right to have
discovery, that it will only be helpful to an early
resolution before trial of this matter. There are
several confusing points in the plaintiff's
statement of claim, which I believe are wrong and
20 that would be easily verified through the discovery
process. There are all kinds of benefits that could
come from - at least starting the discovery process
and so - that has been my position.

25 Now, nothing in the rules, as far as I know, states
that mandatory mediation can be used to interfere
with discovery procedural rights. Indeed it's an
accepted principle from the case law that I've read
and from the directions from the Attorney General
30 that - the fax sheet that he has put out, that some
discovery can be quite helpful for mediation.

5 Finally, this - I've only had two days, it's a very
busy time, we were in Court all day yesterday. I've
had no time to actually put together my legal
position beyond the things I just said, in other
words, I would like to have time to research case
law about the interactions between mandatory
mediation on one side and striking a notice of
examination on the other. I would like to have time
10 to look at what are the conditions under which it is
legitimate to strike a notice of examination, to -
to violate one's procedural rights regarding
discovery. I understand that normally discovery is
something that one does very early on in the process
and that that can only be helpful.
15

And one final point, nothing in the original motion
precludes discovery. There is no reason to exclude
discovery until this full question of trying to
20 immediately force mandatory mediation - you know,
the motion to do that was filed only days after the
pleadings ended and to force a chosen mediator - in
fact, the case law - I have - I brought case law
here today that shows that in terms of studies that
25 have been done, statistics show that roster
mediators have as good success as private mediators.
I can provide that case law now and....

MR. DEARDEN: Your Honour, that's arguing the main
motion.

30 THE COURT: Yes, that's part of the argument you'll
be making on November 15th, Mr. Rancourt.

5 MR. RANCOURT: Oh, okay. So I see no logical - no
logical reason has even been provided in the
original motion, except with regards to urgency and
cost, but I think the cost question, Your Honour, is
related to the major cost of trial. And in order to
avoid that cost, one needs successful mediation, and
- it is admitted in the case law that mandatory
mediation itself is somewhat of an oxymoron, it's a
contradiction in terms, but if you're - in addition
10 to that, you're forcing the mandatory mediation,
there is case law that shows that the courts have
said "You have to believe that that will reduce the
chances of success." And I can show that, if it's
relevant for today, I can show that case law, Your
Honour. So that - should I do that?

15 THE COURT: No, I get your point, you're saying that
actually - mediation can benefit from a discovery
process.

20 MR. RANCOURT: But I'm also saying, Your Honour, that
what I would like is a successful mediation and
these - this - these motions are not producing the
conditions for a successful mediation. They're
doing the opposite. And I sincerely and
authentically want a successful mediation and I want
25 it in a reasonable time where I can get my bearings
and do the study that I need and have partial
discoveries and have a successful mediation attempt.
The conditions that are being forced on me are the
opposite of that, and - and are - I feel are very
30 strenuous. That is the main reason that I'm here
opposing these things.

5 In addition, I'd like to say, Your Honour, that when the statement of claim was first filed, I very soon immediately contacted Mr. Dearden by email and said "Can we talk? Can we informally resolve this?" His answer by email was,

"There's no way we can talk, it's litigation, we're suing you and that's the way it's going to be."

10 MR. DEARDEN: That's false. That is absolutely misrepresentation, Your Honour, what I told him to do is,

15 "You take down the egregious defamatory statements that you have up on your blog that the world can access over the internet and then we'll contemplate whether we're going to discuss."

20 He absolutely refuses that and then what does he do? He puts my takedown notice and notice of liables up on his blog and basically mocks the whole process; that's what he's done.

25 MR. RANCOURT: There are differences in how this is characterized, Your Honour, but yesterday's ruling, after a full day of hearing, made it clear that I'm of the position that this is a case where my freedom of expression rights are being violated by the University of Ottawa, that there is a potential that the University of Ottawa is funding this case, which is - and I have a Charter argument against that....

30 THE COURT: Yes, I think the real issue, Mr.

Rancourt, is whether freedom of expression includes defamation, I mean if the comments are defamatory, then you can't - you can't express them without - without penalty. That's the....

MR. RANCOURT: Of course, Your Honour.

THE COURT: Yes.

MR. RANCOURT: I fully appreciate that. I'm just saying that defamation lawsuits are commonly used in our society to suppress criticism of powerful institutions and so on. And I'm - I feel authentically that that is what I am defending against. I have been criticising the University of Ottawa first as part of my work as a tenured professor for many years in its dealings and in its decisions and in how it's managed on a blog called theuofowatch@blog.com [ph], I've been - that was part of my official workload, it was protected under my academic freedom, it has - I have never been disciplined for that and I have continued to do that following a dismissal which is being vigorously fought by my union, so this expression - this criticism is vital, I believe, to our society and to making the University of Ottawa a better place, that is what I am committed to, and I do have a - a style that is - the style that I have on that blog - I am not finding the right words for it now, but it is very direct and it is non apologetic but I am very careful to not defame, I'm aware of defamation law and I'm aware of the concept and I am very, very careful to avoid that and I have been threatened with defamation lawsuits in the past about my blog by a vice president of the university who retracted

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5 that threat of a lawsuit because it was not tenable
and the student newspapers covered it in detail - in
fact, the way Mr. Dearden is charactering this is
very unjust because the Law Times has recently
published a review article about this litigation
that I thought was very fair and that was balanced,
and I brought copies of it here, if it's
appropriate, to give to the Court, that actually
gives a balanced view of what this conflict is
10 about. And I would like to put it forward as - in
order to defend against these accusations of - these
gratuitous accusations of anarchism. I mean I have
- at academic conferences, been an invited speaker
to talk about the political theory of anarchism, so
what, it's not relevant to this case. And so I
think that these accusations of Mr. Dearden could
rightly be balanced by serious reporting in the Law
Times studying this case, and so I was hoping that
Your Honour might consider that, if it's relevant.

15 THE COURT: You can - you can file it if you wish,
Mr. Rancourt, I just don't know its relevance to the
- to the issue we're now dealing with, namely
whether your notice of examination of Joanne St.
Lewis should be set aside pending the hearing of the
20 main motion, which seeks to have mediation and - in
the absence of - in the absence of exchanging
documents and examinations for discovery, that's
what it - it's trying to....

25 MR. RANCOURT: Your Honour....

30 THE COURT: The main motion is an attempt to short
circuit the normal Court process, that's what it's
all about.

MR. RANCOURT: But Your Honour I believe we're....

THE COURT: It's to short circuit it and get rid of all the expense and - involved with the normal procedure in a Court action, that's what it's designed to do. So logically it follows that when you - when they're asking that there be no examinations for discovery and then you give a notice for examination for discovery, it totally frustrates the intent of that motion and...

MR. RANCOURT: Your Honour....

THE COURT: And so they're saying....

MR. RANCOURT: The present motion is to quash my notice for examination...

THE COURT: Yes.

MR. RANCOURT: ...for discovery. I initiated the process of discovery in a serious and authentic way, before the original motion was filed by sending a detailed discovery plan and asking for a....

THE COURT: Yes, but you did that before he brought this motion, in other words you sent Mr. Dearden a plan of how the whole action would proceed, because you had been sued. You say, "Okay, here's a - here's a plan of how we should proceed."

MR. RANCOURT: Discovery.

THE COURT: Yes. His response to that was, "You know what, what is being proposed is expensive - the usual lengthy litigation, very, very expensive." so what - what he did was let's get rid of all that, let's have mandatory mediation, that's why he brought that motion in the face of your plan of discovery.

MR. RANCOURT: That is his statement to the Court. I will....

THE COURT: Well, also it's supported by...

MR. RANCOURT: I will argue....

THE COURT: ...the - the timing of the filings also, I mean....

MR. RANCOURT: Yes, and I - I...

THE COURT: I'm just looking at what's been filed.

MR. RANCOURT: ...will argue from evidence that this motion is effectively a proxy to prevent discovery and also a proxy of a motion for interim injunction in a defamation lawsuit, that that's effectively, in terms of what its aims are and in terms of its characteristics, that's one thing that I will argue regarding the main motion. So we have different perspectives, Mr Dearden and I, on these points.

But my main - my main point regarding this motion to quash my procedural rights for discovery is that I - I feel that discovery can only be beneficial, will not deter or derail a successful mediation attempt, in fact, it will increase chances of a possible successful mediation. I think that the opposite is being done now and it's almost - it's - I think it should be clear to observers from the outside that when you start forcing a mediator immediately after pleadings are closed, and forcing that the mediation be immediate and saying - accusing the person of all these egregious things that one has never seen and so on, you're not creating the conditions for a successful mediation, and that is my goal and I believe discoveries is part of that, and I believe that it is possible to have a successful and serious

5 mediation, whether it's mandatory or - mandatory and
followed by other - other continued mediation. I
believe it is possible but we're not going there
this way. It's clearly not happening this way. I
don't know what this is about. I - I am living it
as procedural bullying is how I'm experience it, and
it is rapid fire, it is never telling me the - the
10 notices of the times to be in Court are sent after
the procedural deadlines for the notices, there was
no way I could call Mr. Dearden and make a
difference in that, as he - as he claims. So - and
this is systematic, every single motion has been
dealt with in this way, I can provide evidence to
that effect and I will be making a complaint to the
15 bailiff or - what's the name of the person that - at
the counter - at the civil counter that handles
everything, the....

THE COURT: Clerk.

MR. RANCOURT: Not the clerk, but the - oh, I'm
20 forget - I have a memory lapse.

THE COURT: The motions coordinator?

MR. RANCOURT: No. The - anyway, I will be making a
complaint to the proper instances about this refusal
to consult, according to the rules, systematic,
25 always, and last minute putting in of this document
that it will be this date and for this amount of
time, for this - for this motion of today - and I
brought the email here, Your Honour, I came to show
you the evidence right here....

MR. DEARDEN: Your Honour, this has nothing to do
30 with...

THE COURT: Yes, could we...

MR. DEARDEN: ...the issue before you.

THE COURT: ...stick to - could we - could we just stick to the - the notice of examination of Joanne St. Lewis?

MR. RANCOURT: Okay.

THE COURT: Because that's the issue before me.

MR. RANCOURT: Yes. I - I - yeah, there's an email here that clearly shows that I said that I would need an hour today, and the - it was disregarded, completely disregarded. So that's what I wanted to point out. And this has been systematic, I have not - there has been no common courtesy in treating me in this case at all, there has been aggressive - what I consider procedural bullying, every step of the way. And - this is - this is what I am defending myself against and I am defending this action or trying to resolve it in order to preserve my right to critique the University of Ottawa as I see fit without defamation, because my statement of defence is clear - I have many lines of defence, but my position is this was not defamatory.

THE COURT: The calling Joanne St. Lewis the Allan Rock's house negro?

MR. RANCOURT: That's not what was done, Your Honour, and maybe we should not try to rule on the main case right now.

THE COURT: No, no, I'm just saying - you're saying that was not - as I understand...

MR. RANCOURT: For example....

THE COURT: ...you're saying that's not defamatory or....

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MR. RANCOURT: Well, to properly respond I would need some time to....

THE COURT: Yes, no, in any event, that's - that's way off. But - on its face it's very, very striking - it's a striking comment.

MR. RANCOURT: It - yes, and it depends - it depends on whose face, Your Honour. Several colleagues of mine....

THE COURT: Anyway, we're not - I should not have even raised that...

MR. RANCOURT: Okay.

THE COURT: ...that goes to the merits of the main action and that's not what we're talking about, we're talking about notice of examination for discovery here.

MR. RANCOURT: Yes. Yes.

THE COURT: So....

MR. RANCOURT: So just to wrap up....

THE COURT: You're saying that you need discovery in order to have a successful mediation, that there's nothing in the rules that says that because you're having mandatory mediation you cannot have discovery also, that's your argument.

MR. RANCOURT: Yes. I could - yeah, I could wrap it up, I followed all the procedural rules, I have a procedural right to discovery - the motion itself has broken the procedural rules, it should be quashed on that basis alone I would argue - I would submit - and it - there was no need to it, there was 63 days to do this properly but it was - it was two days before, I've had no time to prepare, virtually no time, I've just been working late hours...

MR. DEARDEN: He's repeating himself, Your Honour.

MR. RANCOURT: ...and so on.

MR. DEARDEN: I wish he wouldn't.

MR. RANCOURT: And so - I didn't hear that.

5 MR. DEARDEN: I said - I said you are repeating
yourself, Your Honour, and I wish you would stop.

MR. RANCOURT: And I believe - Your Honour, I will
take directions from you, not from Mr. Dearden.

10 THE COURT: Yes. Yes. I think I've got your point.
Is there anything else you wish to add?

MR. RANCOURT: I was - I was summarizing the three
points that I have made, that the rules of procedure
were violated in this motion itself and I submit
that that's reason enough to quash the motion. The
15 second point is that the process whereby I am - I
submitted a notice of examination was duly followed,
was well in advance, was before the original motion
was submitted, I started with a discovery plan and
many attempts to initiate discovery, so I have a
20 procedural right to discovery, there's nothing in
the rules that somehow mitigates that right, as I
understand the rules. And finally, I don't have
time - I didn't have time to properly address this
in the sense of - as I said earlier, the
25 interactions and the legalities that are involved,
and I believe there was nothing in the original
motion that precluded, in a logical way,
discoveries. Because the original motion was all
geared on everything happening in September, it's
30 now moot in fact.

THE COURT: No, no, I understand that argument.

MR. RANCOURT: Yes.

THE COURT: We've been - we've been through that.

MR. RANCOURT: Yes.

THE COURT: And....

MR. RANCOURT: Those are my points, Your Honour.

THE COURT: Thank you, Mr. Rancourt. Mr. Dearden, what about this issue that Mr. Rancourt raises that there's nothing in the rules or in fact he says he's followed all the rules and he said - he feels there's a successful mediation would be aided by an examination of your client, there's nothing in the rules that prohibits it, and - and if - if push comes to shove, he'd like time to - to actually pull together an argument to present on that point.

MR. DEARDEN: That's the merits, Your Honour.

THE COURT: Yes.

MR. DEARDEN: That's totally the merits.

THE COURT: Well, it's the merits of - no, no, of the - of the examination for discovery, because during the course of his - during the course of his submissions he said there's nothing in the rules that says mandatory mediation essentially viciates any right to discovery and he'd like to research the law and argue that point. So he's sort of implicit in his argument is that - seeking an adjournment to argue this very motion before us today.

MR. DEARDEN: No, but what - everything that he said, Your Honour, in my respectful submission, is going to the mandatory mediation motion itself. He's going to want to argue there, "I would have a better mediation if I had discovery." But that's - that's his argument against having a mandatory mediation occur prior to the examination for discovery, that's

5 all he's been telling you *ad noseum* is that "I want
to have that and that I'm creating bad conditions."
He's - that's for the main motion for mandatory
mediation. The motion that's before you now is is
it an abuse to have served a notice of examination
for discovery when he knew I had a motion filed on
August the 18th saying "We don't want discoveries.
We want to try to save cost, time, Court resources
and take a good shot at settling this case before
10 any of that goes on, because my prediction, if we
can't settle it in a mandatory mediation, there is
going to be an enormous amount of Court resources
devoured by this - this case."

15 THE COURT: There's no question about that, just look
at what's happening...

MR. DEARDEN: Today and yesterday.

THE COURT: I mean....

15 MR. DEARDEN: Today and yesterday and I want a
skilled mediator to be alone in a room with Mr.
20 Rancourt who is telling you to call somebody a house
negro isn't defamatory, it is incredible, it boggles
my mind, so that's - that's - that's my response,
Your Honour, is that - and also I should add and put
on the record, because I'm going to order the
25 transcript of this, it's a liable action and I'm
representing a plaintiff. The conduct of the party,
defendant and their counsel, if they had one, can
and will be used against a defendant for malice and
aggravated damages, and to be accused, as I was
30 yesterday, of procedural bullying and improper
behaviour and all this stuff with Master McLeod,
completely rejected - and to hear today that I'm

procedurally bullying him will all be used against him, and I repeat it to him time and time again, and he won't listen. So that's - that's my submission, Your Honour.

5 MR. RANCOURT: Your Honour, yesterday there was no mention of procedural bullying and I will be ordering the transcript. That is incorrect. Is it - is it useful for me to make more comments?

10 THE COURT: No, you've - I've heard you and I understand your position and I'm going to do an endorsement on the record now. Here's my endorsement on the motion to set aside the notice for examination for discovery.

15 "It should have been patently obvious to Mr. Rancourt that to serve an appointment to discover the plaintiff in the face of a motion to the Court seeking a mandatory mediation without holding discoveries would have the effect of totally frustrating the potential merit of that motion. This motion to strike the notice of examination is allowed. The notice of examination is struck. Mr. Rancourt is free to argue the merit of having discovery during the hearing of the main motion on November 15, 2011."

Cost.

25 MR. DEARDEN: Your Honour, I've prepared a cost outline.

THE COURT: Have you....

MR. DEARDEN: Your Honour....

THE COURT: Have you given a copy to Mr. Rancourt?

30 MR. DEARDEN: Yes.

MR. RANCOURT: Yes, I have one, Your Honour.

5 MR. DEARDEN: I just handed it to him. On the motion
to adjourn, Your Honour, the - he resiled from - Mr.
Rancourt resiled from agreeing that we would adjourn
the motion so we could conduct cross-examinations,
he had eyes wide open, knowing those examinations
weren't finished and still to this day insisted
notwithstanding Master McLeod's decision yesterday,
he still fought it today, and he lost and in my
10 submission, this is a case for substantial
indemnity, I warned him to please withdraw - or
please agree to the adjournment, I warned him,
please agree - withdraw the notice of examination,
he did neither and battled both of them today and to
me it was an abuse to file that notice of
15 examination for discovery, knowing that we have done
all of the work we've done and so both - in both
cases it's substantial indemnity costs, in my
respectful submission, and we - we've set that out
in the cost outline, Your Honour, I won't belabour
20 the point. I would ask though that they be payable
forthwith.

THE COURT: Mr. Rancourt, what do you have to say
about costs?

25 MR. RANCOURT: Well, in my statement of defence I
made - in my statement of defence - in my statement
of defence for the original motion I made arguments
on Charter grounds, paragraph 61 to 67, that I
believe that the University of Ottawa is funding
this and on that basis, it is - it represents - it's
30 not allowed by case law because it represents an
asymmetry of resources and means it's effectively a
government funded institution, which is suing an

individual for defamation which is not allowed. Individuals are allowed to do that, but not government funded institutions such as school boards and so on, according to case law, so - until we resolve that question, I believe that I am being treated in - in a symmetry of arms and a symmetry of resources and therefore I would ask that this - any costs only be attributed after the main case is resolved and that - that these costs be discussed at that time if we have had the occasion to resolve this - the question of my Charter defence in my statement of defence.

In addition, Your Honour, I would like to say that - in my honest view, this was not abusive, I am being authentic, I am - feel that I am defending myself, I am standing up for principles that I believe in, that is my position, I think that the abusive argument is not applicable to me in any way. I'm doing the best I can as a self represented person. I am unemployed since 2009 from the University of Ottawa and I have qualified for legal help and free mediation with Law Help Ontario after duly filing their application, and this would be - this already is a financial burden that I'm assuming to the degree that my principles are standing, so I would like those factors to be considered as well.

MR. DEARDEN: Your Honour, the same argument was made yesterday before Master McLeod and he rejected that and ordered 3,000 in costs to be paid by the defendant. To me it is completely irrelevant who - who may be paying Gowlings invoices to defend the

individual plaintiff, it is not the University of Ottawa that brought this liable action, it is Joanne St. Lewis who is suing a person who thinks that he can call her a house negro of the president of the University of Ottawa, and I point out what Justice Sachs said in the Vale [ph] decision, Your Honour,

"Both these actions of the plaintiff were an abuse of the rights of the litigant to examine witnesses, the fact that the plaintiff is self represented cannot excuse his actions in abusing the Court processes available to him, particularly given the fact that the plaintiff himself is a lawyer."

And part of what I'm going to be asking questions to Mr. Rancourt about, and - he has to provide me on October the 11th, next week, is how much equity he has in the house that he owns, 60 per cent interest in, which we did not find a mortgage on, and he bought it 10 years ago for about \$226,000. We've asked him to simply take down his defamatory statements and he absolutely refuses to do that and that's why we're here, so I submit that there should be no - you should not in any way be swayed by the submissions that he has been unemployed since the university terminated him, which he is in a labour grievance with and will no doubt be - if he wins it, will be in - all the lost income that he had, but regardless, he's got a house and he's in litigation, he's doing these things with eyes wide open, he knows what he's doing and the costs should follow the event and we won both motions, and those are my submissions, thanks.

MR. RANCOURT: Your Honour, I forgot to mention something, could I do that?

THE COURT: Yes, Mr. Rancourt.

MR. RANCOURT: Your Honour, I would like to ask that - if costs are ordered against these two motions, that they be payable - if the original first motion is won, depending on the outcome of the original first motion which I believe is untenable and I will argue that, so I would ask that that condition be put on it as well, as an alternative argument. I believe that this entire series of motions is a kind of house of cards without a foundation, and I believe that I should win the original motion and I would ask therefore that these costs be delayed until then.

THE COURT: Thanks, Mr. Rancourt. Just so counsel know, there's two endorsements, one is in the back of the main motion, it's in my green fountain pen ink, on the bottom of that I say,

"As to costs see my endorsement on the motion record in aid of striking out the notice of examination."

And on the back of the motion record for striking out, it's in blue ink, a little more legible and that's where the endorsement of costs appears, which continues to the inside front cover. The registrar will make copies of these endorsements for you.

"With respect to costs of this motion and the contested adjournment that is the subject of my endorsement on the back of the main motion record, it is clear that the adjournment should

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have been consented to and also that the notice of examination of Joanne St. Lewis be withdrawn. The plaintiff should not have been required to attend Court with counsel today. Costs are fixed in the sum of \$2,000 inclusive of GST and disbursements and are payable forthwith in any event of the cause."

10
That means, Mr. Rancourt, you have to pay those costs and it doesn't matter what happens in the main action, this today should not have occurred.

MR. DEARDEN: Thank you, Your Honour.

THE COURT: Thank you.

MR. RANCOURT: Could - could - sorry, but could forthwith be clarified, Your Honour?

THE COURT: Forthwith means right away.

15
MR. RANCOURT: Okay, thank you.

THE COURT: Within a reasonable time.

20
C O U R T A D J O U R N E D

53
Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Linda A. Lebeau, certify that this document is a true and accurate transcript of the recording of St. Lewis v. Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario taken from Recording No. 0411-35-20111007-094743 which has been certified in Form 1.

OCT 31 2011

Date

Linda A. Lebeau

Linda A. Lebeau

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

V.

DENIS RANCOURT

PROCEEDINGS

HEARD BEFORE MASTER MACLEOD
on Thursday, January 26, 2012 at OTTAWA, Ontario

APPEARANCES:

Dearden, Mr. Richard
Rancourt, Mr.

Counsel for the Applicant
Self Represented

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Transcript Completed:	February 21, 2012
Ordering Party Notified:	February 22, 2012

THURSDAY, JANUARY 26, 2012

5 THE COURT: Yes, good morning Mr. Dearden and Mr. Rancourt. So Mr. Dearden, this is your motion. I understand that it's largely on consent?

10 MR. DEARDEN: Only one is on consent, Master. I wonder if I can just take four minutes to walk you through how we got where we are today and we'll figure out what we do.

THE COURT: Sure.

15 MR. DEARDEN: You have a confirmation of motion form which sets out four matters; the case management of the libel, which is on consent, and then fixing dates for – in the libel action as well as in the champerty motion that Mr. Rancourt has filed. This is something he does not want to do and that's items two, three, and four.

20 THE COURT: Right.

25 MR. DEARDEN: I'm requesting today, Master that you assign this libel action to case management, but I'm also requesting that you set a timetable for the libel action and the champerty motion that the defendant served. He refuses, as of today, to discuss timetables; he wants to delay that and put it off to another day and even though he consents to case management, he opposes a case conference today because he says this isn't a case conference. And in my submission there's no valid justification for not fixing a timetable for both the libel action and the champerty motion. We have, I believe, 1.5 hours

30

set aside today. And initially, Master, that was for an order that this case be assigned for case management and a timetable for an intended summary judgment motion that I was going to file prior to examinations for discovery being held. And the defendant informed me that he would consider moving, having read the combined...mechanical case of the Court of Appeal, he would consider moving for a stay or dismissal of the summary judgment motion if I filed it because he would be deprived of his examination for discovery. And I think that position is wrong, it's not the way I read the case, but the bottom line, Master, is it is not worth the time or the cost to risk that my friend - or Mr. Rancourt, rather, brings a motion to stay or dismiss. It would be an absolutely useless proceeding in terms of deciding the merits. So I wrote him on January the 17th - and I'll give you a copy of that email - and told him - I informed Mr. Rancourt that - as you see in paragraph two, he was going to get the affidavit of documents that Friday, which was January the 20th, which he did do, including all the copies of the documents. And - paragraph two - he'd be served with a discovery plan or before the Friday and I said on January 26th I would be asking Master MacLeod to defer dealing with that part of the motion, requesting case management of the summary judgment motion, which will not be filed this month. I served him, Master, with a discovery plan on January the 19th - and I'll hand you a copy of that - where I said we would - I proposed that we would immediately provide copies of

all the documents in Schedule A of the affidavit. We've done that, he refuses to do that. And the examination for discovery of the plaintiff will be February 2nd, the examination for discovery of the defendant would be February the 3rd. So that's what I've proposed and he refuses to discuss any dates for examination for discovery as of today, even though, Master, on September the 28th he served a notice of examination for discovery of Joanne St. Lewis - which I'll show you a copy of - so this was served September the 28th. He wanted to examine the plaintiff on November the 8th last year, but today he just doesn't want to discuss dates of examination for discovery. In short, Master, it's critical, in the plaintiff's submission, to get this on for trial as fast as we can. We're not going to file the summary judgment motion, in light of the - what the defendant informed us to do, we now want to get to trial as fast as we possibly can and there is no excuse for any delay, in my respectful submission. And one of the reasons for why we want to get to trial as fast as we can is the defendant keeps, in my submission, defaming the plaintiff and as recently as a couple of weeks ago, he goes on a radio interview as an...

MR. RANCOURT: Objection.

MR. DEARDEN: ...station in Montreal.

MR. RANCOURT: Objection. This is not relevant to the motion at hand. These allegations of additional defamation has been....

THE COURT: I'm not deciding the allegations, I'm just hearing why Mr. Dearden thinks that there's

some urgency to this and so I accept that you have a different view of events, and that's fine. I'm not necessarily agreeing with everything Mr. Dearden has to say.

MR. DEARDEN: All I'm - and I'm not, by any stretch, Master, asking you to decide if something's defamatory or not. Our position is he continues to damage the reputation of Joanne St. Lewis and continues to give interviews, continues to post defamatory statements, in our submission, on his website, and we want to stop him and we want to stop him right now. So I have proposed two timelines, Master, which I'll hand you. One for the libel action, one for the champerty motion because also this month what he - the defendant did was serve a motion - champerty motion claiming that the University of Ottawa was maintaining this action and it should be struck. And Mr. Doody [ph], who's sitting beside me, is on for the University of Ottawa. We want that - these timelines to run parallel, Master. We think that the champerty motion is actually an abuse of process and is absolutely without foundation, but we have to convince a judge of that and therefore we want this heard as quickly as possible, but at the same time, get on with the examination for discovery that Mr. Rancourt so desperately wanted last September and wanted to - was ready to examine the defendant - or the plaintiff on November 8th of last year and there's no reason he can't, in my respectful submission, be ready to examine the plaintiff on February 2nd. And we want to examine him the next

5 day. So those are my submissions as to where we are, Master, and I don't think there's any dispute that the - this action would be assigned to case management, but of course, that's your call to make and only your call to make that order. And if you do, we have over an hour left to set dates for the libel action and, I would respectfully submit, set dates for the champerty motion.

10 THE COURT: All right. Thank you. So, Mr. Doody [ph], do you have any....

15 MR. DOODY [ph]: Thank you, Master. As Mr. Dearden indicated, I represent the University of Ottawa and we've become aware - my client's become aware of the motion that Mr. Rancourt has filed, seeking to stay this action.

20 MR. RANCOURT: I'd just like to object, if I could, at this point or just get a clarification. Mr. Doody [ph] has not filed a motion to intervene and he's not a party to this case so I'm wondering if this is not - should not be simply a matter for the registrar. I mean, I have no idea what would be in that motion to intervene. I've been given no indication of that and I wonder to what degree this intervention is....

25 THE COURT: Well, it's not clear that there's going to be a request to intervene. Mr. Doody [ph] is here, I gather, because he believes his client is affected by the motion that you propose to bring so I'll hear what he has to say about that and then I'll hear what you have to say.

30 MR. DOODY [ph]: Thank you, Master. And indeed, we - the University did retain us because it was

5 concerned that the motion which Mr. Rancourt has
filed seeks a determination by the Court that the
University is guilty, if I can use that word, of the
tort of champerty. And in those circumstances I'm
instructed to bring a motion to intervene in the
motion. And the reason for my attending today is
since the - I understood that there was at least a
potential for the champerty motion timetable to be
10 set today, that our motion to intervene be worked
into that timetable because the motion to intervene
must necessarily be heard before the champerty
motion itself. And we're anxious to expedite that;
I've come prepared to set dates for various steps in
that - in the motion to intervene process.

15 THE COURT: Yes, so Mr. Rancourt, so I understand
then that there's no objection to case management,
but you may have something to say about what else we
can do today.

20 MR. RANCOURT: Yes. Master MacLeod, I've prepared a
presentation - an argument against this motion and I
estimate it will take approximately 20 minutes to
make the presentation.

THE COURT: All right. An argument against what
motion?

25 MR. RANCOURT: To the motion that's before the Court
today.

30 THE COURT: I thought that the motion, as such, was
for case management and a timetable for a summary
judgment motion and Mr. Dearden's not proceeding
with the summary judgment motion. He's - and you're
not opposed to case management. And so the question

then is whether we then create a timetable today or at some other occasion, I guess...

MR. RANCOURT: Yes.

THE COURT: ...right?

MR. RANCOURT: My presentation addresses that, Master MacLeod. There are two preliminary points that I'd like to immediately communicate to the Court which may affect - which may have consequences for today.

THE COURT: Right.

MR. RANCOURT: The first is I want to say I'm sorry that I was not aware of rule 1.09. In that regard, as you may know, I was acting in good faith to clarify and streamline this hearing. And I'm not opposed to convening a case conference, as per rule 77.08. That's the first preliminary comment I want to make.

THE COURT: Okay.

MR. RANCOURT: Secondly, an important matter which might affect today and the later proceedings is the following one. I want to advise the Court today, following the Attorney General's directions, that I require bilingual Court proceedings. And I don't know at this - if - you know, how much this will affect case management itself or the scheduling. I don't know if the Master's bilingual, I don't know if Mr. Dearden is bilingual, and I don't mind if the proposed case management is English only for now, but I want the motions to be in a bilingual proceeding context. Those are my preliminary points.

I'm going to first deal with the motion as filed and served. At this stage the action is not under case management. This is - this is a motion hearing, not a case conference.

THE COURT: well, Mr. Rancourt, if all parties are in agreement, then it is under case management because I'll make that order so...

MR. RANCOURT: Oh.

THE COURT: ...so then the question becomes when should the case conference take place...

MR. RANCOURT: Okay.

THE COURT: ...right...

MR. RANCOURT: Thank - thank you.

THE COURT: ...and you have some reason why it shouldn't be now?

MR. RANCOURT: Master MacLeod, you have just informed me that you will make the order for case management.

THE COURT: Yes.

MR. RANCOURT: According to the rule, it was not clear that that was an immediate...

THE COURT: No.

MR. RANCOURT: ...consequence. Well, I object to this hearing being turned into a case conference in which procedural orders would be made for the following reasons. Rule 77.085 requires notice and only partial or incomplete notice was given at the last minute, well beyond the deadline to serve the motion record. It would procedurally unfair to me, as a self-represented litigant. I'm not prepared to proceed for the following reasons. I was in a demanding labour arbitration hearings - I was in hearings this week in a labour arbitration case. I

5 had no time to obtain advice from a lawyer; he was
not available this week. As I had informed the
plaintiff three times in writing that I was seeking
advice from a lawyer and that this was a reason that
I couldn't proceed. That is the main reason today
that I don't want to proceed. One of the issues
involves a third party who is contemplating serving
a motion to intervene, but has not done so. It's
difficult for me to even contemplate - I can't
10 contemplate what the steps are; I have no idea what
would be in that motion. I have not been given any
indication of what that motion would be - how it
would be structured, what - what the main points
are, or anything like that, so for me I consider
even if I had had time to consult a lawyer, I'd
15 consider it very difficult to be able, on the spot,
to imagine what steps might be needed or what
counter steps I might want to propose, without
knowing what the motion is about.

20 Another - another issue involves discovery. Mr.
Dearden has indicated that I had asked for a notice
of examination for discovery back in February - in
September - September 28th. This is true. At the
time I believed that discovery would be very helpful
25 for the mandatory mediation, but Mr. Dearden
requested - it took six months to eventually resolve
the mandatory mediation in question and we did not
obtain any discoveries at all in that time because
the plaintiff was opposing all discovery prior to
30 mandatory mediation. This is a very different
situation where I have put forward a motion to

dismiss the action, therefore I have been led - I have some indication that discovery would be a waste of the Court's resources in circumstances like that, so this is a very different situation. I don't think Mr. Dearden is right to compare the two circumstances; they're very different. Likewise....

THE COURT: Hang on a second, because now we're blurring on the issue to the merits of that proposed timetable itself, so....

MR. RANCOURT: Yes.

THE COURT: So if your position is that we should not get into that, then I need to decide that first. If your position is that there are certain kinds of orders that you - that ought not to be made today because you want to retain counsel and because you haven't had notice of that, we can deal with that as the issues come up, but if you want to deal with the timetable and the question of discoveries - and I just point out that under the rules, either party can serve a notice of examination and then you must attend. Now, that's not terribly efficient because you need to have some coordination as to availability of dates and so forth and of course, it's helpful to sequence them and that's what case management is all about. So the question as to whether there should be motion records served, cross-examination on the affidavits on the motion records, in advance of discovery is a sequencing question. That's the very sort of thing we deal with in case management and so that's what I will do at a case conference and you know, frankly, I think there would be some benefit in doing that today, but

your - but I'll deal first with your objection to us doing anything in - if I'm understanding you correctly - if it's only an objection to any substantive orders that might prejudice you, then that's fine, I think we can deal with that when we come to it; I've heard what you have to say about that.

MR. RANCOURT: Yes, thank you for helping me focus my argumentation. You are correct, I am still speaking to the question of whether we should do any scheduling today.

THE COURT: Okay.

MR. RANCOURT: So....

THE COURT: So I've heard that you're not - you haven't had time to prepare for it and that you're not on notice of some of the things that might be discussed.

MR. RANCOURT: Yes. As a self-represented litigant, I would ask that the case conference - pre case conference information or briefs be exchanged some weeks or so before any case conference so that I can consult a lawyer and get my bearings. I do not have the experience or knowledge to make scheduling commitments on steps in immediate circumstances without sufficient notice. It's very difficult to know the legal steps that may be needed and how long these steps may take. Now - for example, at one time I tried to get important corrections made on a transcript to a cross-examination on an affidavit and that alone - even though it was a very important point where the witness was saying something opposite than what was in the transcript, that took

5 several months because - well, because the plaintiff put a hold on it and I couldn't get that correction until several months after it was needed. So that's just one example of things that are difficult to foresee and that I have little experience with.

10 Those - those are my main reasons. I mean, when I say that I would like pre notice, I want to emphasize that I have been asking often for information about what the scheduling would be like, what steps are needed and so on, and I was rebuffed many times - there is evidence in my brief there and the case management conference or proposal form was used as a reason not to answer my questions, as though I had to do it only in front of the Court - 15 that I can only get answers in front of the Court and I think that's, in my sense, a misuse of case management and the Court. I would like - what I would want from case management - and I would like to understand the formats - the possible formats of case management more - but what I would like is for 20 example, for the Court to direct the counsels to be more cooperative in exchanging information out of Court. I've - I've been having a very difficult time with that.

25 I would like to ask the Court to examine Exhibit A of my motion record. This is an email I sent Mr. Dearden on January 6th, in which I propose how to resolve the motions that we're here now dealing with. I said:

30

5 "In order to avoid wasting valuable judicial time and resources, I advise you as follows. A, although I do not agree with your characterization of the reasons that case management would be beneficial, I am not opposed to the motion, and in fact, prepared to support an application for case management. And B, I also do not oppose a case management discussion to set a schedule for several next steps of the action, however I do not believe that this can be done most efficiently and most justly at a scheduled hearing of your motion for the following reasons."

10 And one reason, in particular, at the bottom of that list is:

15 "On January 5th, 2011 I served you with a motion to dismiss the action, pursuant to rule 21.01(b)(d) of the Rules of Civil Procedure and I wish this motion to be heard before your intended summary judgment motion."

So this was back in January 6th....

20 THE COURT: But there's not going to be a summary judgment motion now.

MR. RANCOURT: Yes. Then I said,

25 "Given the above described circumstances, I propose the following agreement to solve your motion to compel a case management."

And I gave four points on the next page. And I ask:

30 "Withdraw your motion for case management, B, party bears his own motion costs, we make a joint request for case management, arguing the mutual benefit to both parties with - without...."

THE COURT: Okay, let me just stop you there...

MR. RANCOURT: Yes.

THE COURT: ...because that doesn't sound to me as if it has anything to do with whether or not we engage in a scheduling exercise now. That sounds to me that it has to do with whether we're not - everyone should have had to come here today.

MR. RANCOURT: Yes. It does relate to that and I do want to address that point.

THE COURT: Okay, well, we'll get to that later, if and when I get to dealing with whether there should be any costs of today, because that's really what that would be directed to.

MR. RANCOURT: Okay, I'll try to...

THE COURT: Okay?

MR. RANCOURT: ...identify the items I had planned to say - weed out the ones that would be related to that issue more.

THE COURT: Well, is there anything else you want to say to me about why we should not talk about scheduling now, as opposed to on another date? And I understand that's reserving the question of whether there's any particular issue that we should deal with today...

MR. RANCOURT: Well....

THE COURT: ...but you certainly....

MR. RANCOURT: My final...

THE COURT: Sorry.

MR. RANCOURT: ...statement...

THE COURT: Yes.

MR. RANCOURT: ...in that regard would be as follows.

THE COURT: Yes.

5 MR. RANCOURT: I feel that, to a large degree, I was
ambushed into have - trying to schedule these dates,
against my consent, using a motion that was
completely abandoned or already on consent, that the
plaintiff could have simply asked me, "Would you
agree to case management?" I would have said yes
immediately. I had asked the plaintiff, in writing,
10 long ago, twice, "Please, when you have a motion,
just consult me and I may be able, on procedural
matters, to simply agree and we don't have to Court
over it." So to me this feels like itself an abuse
of process. And a good reason that we need to go
into case management. So that's what I'm upset
about and that's the - that's the thing I need to
15 say about why I don't want to discuss dates today.
I'm simply not prepared.

THE COURT: Okay. Fair enough, although - well, I'll
come back to that in a second. So, as I said, the
issue of whether we discuss scheduling now is a
20 different issue from what we discuss and what orders
I make, so that's a different question. The - let
me just clarify, when you said earlier that you were
going to request that part of the proceeding to
proceed bilingually, did you say the trial or did
you say the motion?

25 MR. RANCOURT: The - the - I would accept that the
case management...

THE COURT: Yes.

MR. RANCOURT: ...for now, at least initially...

30 THE COURT: Yes.

MR. RANCOURT: ...until we run into problems
potentially, be in English only, but all the main

motions, all the cross-examinations, and the - and trial, if there is one, yes, I would want bilingual proceedings.

THE COURT: All right. All right. Thank you. And you've seen the timetables that Mr. Dearden has proposed for the champerty motion and for the libel action.

MR. RANCOURT: Only seconds ago. I haven't even looked at them yet. This was never sent to me ahead of time.

THE COURT: Okay. Fair enough. All right.

MR. DEARDEN: Only because he refused to discuss any dates, Master.

THE COURT: Well, you know, I don't really want to get into who refused to do what. I mean, if we're going to case management, then well, I need to be concerned about how we go forward. I mean, I'm aware of some of the history and one of the things, as you know, Mr. Rancourt, that was raised on the previous occasion was that there were issues about things being posted on websites about counsel. So there may be good reason why, under those circumstances, communication, correspondence, and so forth - why people want to do that in a Court forum or do it in writing. So....

MR. RANCOURT: If I may...

THE COURT: Yes.

MR. RANCOURT: ...make a comment, Master. This is not unidirectional. Counsel for the plaintiff....

THE COURT: I'm not saying it is.

MR. RANCOURT: That's...

THE COURT: I'm saying that's a good reason why...

MR. RANCOURT: Yes.

THE COURT: ...or that when those sorts of issues come up, it impedes informal communication, right?

MR. RANCOURT: Okay.

THE COURT: So and it lends itself to formal documented communication and to formal Court orders and that's another reason why case conferences are sometimes a useful forum to have the discussion because they're in...

MR. RANCOURT: Yes, but I object to....

THE COURT: ...not exactly in public, but they're at least before an officer of the Court.

MR. RANCOURT: I object to the only example being about me. Mr. Dearden has made severe comments - defamatory comments in the media that have been published about me.

THE COURT: Well, my point is not about you. My point is about process and so - all right. Okay, thank you. So I've said - endorsed as follows - I'll get the registrar to make a copy of this in moments, as it's handwritten. I've said,

"The parties consent to the motion for case management. And in my view, this is a case which would benefit from active management, having regard to the criteria in rule 77. The moving party has decided to defer a summary judgment motion. What the plaintiff does ask is an order establishing a timetable for the action and for a champerty motion. Mr. Doody [ph] appears because the University will seek leave to intervene in the champerty motion. He also asks for a timetable to permit an orderly sequencing of the events which may involve the university. Mr. Rancourt agrees that the action should be case managed. He also indicates that

he has no objection to a case conference being convened and furthermore, that he has no objection to the case management taking place in English. He advised us, however, that he will be exercising his right to request the hearing of the motion or trial to be in French."

Bilingual.

"Having regard to...."

Sorry.

"And so Mr. Rancourt proposes however that the case conference be on a different day to give him time to prepare. Having regard to all of the above and to the purposes of case management and to the imperatives of efficiency and cost-effectiveness for the parties and for the Court, an order will go as follows. A, this action is subject to rule 77 and B, there will be an immediate case conference to determine what aspects of the case may be scheduled at this time and whether any procedural orders should be made at this time."

So, subject to anything else anyone wants to say at this point, that deals with the motion and then I will reconstitute. And since I have time and you have time and everybody's here, we'll have a case conference and we'll discuss what matters can be sequenced and what can't and Mr. Rancourt, I'll obviously hear from you if there's anything that you're not able to deal with. But we need to talk about the champerty motion; when you're going to bring that and if there has to be a motion in advance for the - or, I guess, during once you've served your materials for the University to

intervene and we'll have to sequence that as well. And that's the bit that involves Mr. Doody [ph] and then we'll talk about the question of...

MR. RANCOURT: Master MacLeod....

THE COURT: ...cross-examination and discovery and so forth and we'll see where we go with it. I'm not going to pre-decide.

MR. RANCOURT: If I may...

THE COURT: Yes.

MR. RANCOURT: ...I don't feel prepared to even visualize the steps that will be needed at this time. I've spent a lot of time preparing the champerty motion itself - the record itself, since this motion was filed, I've been in labour arbitration hearings, my lawyer has been away, I - I have no - I just see these things and I don't even know what kinds of steps can go in between....

THE COURT: Well, you obviously know....

MR. RANCOURT: So I - I - I....

THE COURT: Mr. Rancourt, you obviously know that - you prepared a notice of motion and the supporting materials and you obviously know that at some point you have - we have to pick a date for the motion and you have to serve it.

MR. RANCOURT: Yes.

THE COURT: And you obviously know that if there's an affidavit there may be cross-examination on the affidavit and that they will be filing responding materials and that you will need an opportunity to see those materials before the hearing. So you know, those are the kinds of general things that we need to talk about. And if there's something that

you're taken aback by or don't understand, that can't be explained quickly, or you need legal advice, I'll deal with that objection when we get to it.

MR. RANCOURT: So, Master MacLeod, I - we're doing this over my objections and I would like...

THE COURT: I understand...

MR. RANCOURT: ...your reasons for overriding my objections...

THE COURT: I've just given them.

MR. RANCOURT: ...in the decision if that's possible.

THE COURT: I have just given them. I've read you my reasons. I've read you my decision. We're going to have a case conference.

MR. RANCOURT: Okay.

THE COURT: I have not decided what we're going to discuss at the case conference or what I'm going to do about that discussion so - and that takes place in a somewhat less formal - although we'll be doing it in here in a few minutes.

MR. DEARDEN: Master...

THE COURT: Yes.

MR. DEARDEN: ...if I may, when Mr. Rancourt served his champerty motion, he also sent an email - and I'll try to find in a second - that he's wrote [sic] to myself and David Scott and demanded to examine - I forget what - was it this month? But he was demanding to examine Professor St. Lewis, Alan [ph] Rock, and the Board of Governor's Chair, Robert Giroux. Demanding that that would happen and we told him - as soon as I saw that....

MR. RANCOURT: Objection. That's a mis-characterization of the facts.

MR. DEARDEN: No, no, don't....

THE COURT: Mr. Rancourt, you can object - you can object, but what you're doing is not objecting, what you're doing is disagreeing with what's being said. You get a chance to do that, right? An objection is where you think something I shouldn't be hearing. It's not that you disagree with it. If you disagree with it - you're entitled to disagree with it; I understand that parties disagree about a whole lot of things and that's fair enough, that's why we have Courts. Okay. So....

MR. DEARDEN: It's actually at tab, Master, tab G of the respondent's record.

THE COURT: What I'm going to do is I'm going to - I just want to deal with the motion and then we'll have a case conference and we'll talk about all of that. So unless this is - these are further submissions as to some other...you need as part of the motion, I want to deal with this - I'll let the registrar make a copy and I'll let the registrar go and then we'll have a case conference. We'll take a five minute break before I start.

MR. DEARDEN: I'm not sure if it is relevant to the motion. I'm just telling you why I was drawing it to your attention. You've heard multiple times that he's not prepared to do things yet he was pressing us, as you see in G, to - twice he sent emails saying, "I want to know the availabilities..."

MR. RANCOURT: Objection.

MR. DEARDEN: ...of Giroux and...

MR. RANCOURT: Objection.

MR. DEARDEN: ...and....

THE COURT: Yes.

MR. RANCOURT: That is not relevant to the motion.

THE COURT: Okay. I think that's right. I think that's part of the case conference as to why we shouldn't - or why he's not prepared...

MR. DEARDEN: Okay.

THE COURT: ...to agree to a schedule so we'll come back in just a few moments so I'll just sign this endorsement and let the registrar make a copy and then I'm going to - I'll come back.

MR. RANCOURT: We will be talking about costs, Master MacLeod?

THE COURT: Well, if you want to talk about costs...

MR. RANCOURT: I....

THE COURT: ...of the motion, that's distinct from the case conference, we can do that, yes. You want to say something about costs?

MR. RANCOURT: Yes, I do. I've already mentioned Exhibit A, where on January - of my motion...

THE COURT: Yes.

MR. RANCOURT: ...where on January 5th - 6th, rather, I tried to propose how to resolve this without needing a hearing and...

THE COURT: Right.

MR. RANCOURT: ...where we could exchange information and eventually go into case conference. That was flatly rejected. I would like to draw your attention to Exhibit C of my motion record. That's the notice of motion for the champerty motion. I think that it should have been immediately obvious

5 to Mr. Dearden that my motion should be heard prior
to a summary judgment motion and this was sent -
served on January 5th and it was properly filed with
the Court on January 6th. I think that that should
have made it immediately obviously that it was time
to abandon this motion to set a schedule for a
summary judgment motion. Then I can draw your
attention to my Exhibit F. This is plaintiff's
10 counsel - an email to me that was sent on the
deadline day for motion record material and this
email - I'm looking at the second email in that
exhibit, which is the January 17th, 12:24 p.m. email
which Mr. Dearden has already talked about. That
email gives false notice that he will seek to defer
15 the summary judgment part of the motion instead of
just abandoning it. So in addition, Exhibit F - or
the first part of Exhibit F - the first email in
that string is some statements to Mr. Dearden where
I say:

20 "...both parties consent - as is our case - to
case management, a motion is not required."

That's my paragraph four - that's in my paragraph
four. In my paragraphs five I say:

25
30 "Since you are now withdrawn your only other
requested order your notice of motion point two,
in your motion for case management, it appears
there seems to be no need for a motion hearing,
therefore I do not understand why you insist on
the motion hearing and are requiring me to
appear on January 26th. Can we not send to
request case management by letter to the Master
and drop the motion hearing and motion?"

In my paragraph six I say:

“Are there any remaining contested matters in your motion for case management? If so, what are they?”

In paragraph seven I say:

“Will you be asking the Master that examination for discovery also be deferred until your intended summary judgment motion is heard?”

That question is relevant, Master, because this motion requested that there be no examination for discovery. And I’d like to draw your attention to the motion statement. The notice of motion, which is Exhibit one of the plaintiff, point two says:

“An order establishing a timetable for the steps the plaintiff intends – intended summary judgment motion, to be served prior to the hearing of the motion...”

It was never served.

...including setting a date for the hearing of the summary judgment motion to take place prior to the examinations for discovery in this action.”

He was seeking to block the examination and all of a sudden it’s an urgent matter; it has to be done on February 2nd. And then immediately following that, February 3rd, irrespective that there might be all kinds of motions for getting answers, refusing

5 motions and so on. This - this is what I've been dealing with.

Then there's Exhibit H that I would like to draw the Master's attention to. In this email; January 17th I asked Mr. Dearden five simple questions about the champerty motion, which we now agree is going forward. I say:

10 "Please inform me when you intend to serve your affidavit in response to the champerty motion."

Et cetera. I make five simple statements. I'm looking at my own motion record, affidavit - Exhibit H, rather, the email of January 17th.

15 MR. DEARDEN: Well, we're missing a page.

THE COURT: Okay, well this is,

20 "Dear Mr. Dearden, please inform me when you expect to serve your affidavit of Joanne St. Lewis in response to champerty motion."

And then it goes on to say....

MR. RANCOURT: Mr. Dearden has the page. He's found it now.

THE COURT: Yes.

25 MR. RANCOURT: So there were requests and these were simply rebuffed and I was told, "Come to the hearing and that's where you'll be given this kind of information." There was no possibility of exchanging information except in Court. So the motion wants an order for case management; it's by consent. It was not - there was no effort to ask me about it, I would have agreed to it immediately.

30

Wants an order setting the steps and schedule for a summary judgment motion. Now there is no summary judgment motion, it's been abandoned. Wants to stop examinations for discovery. Wants it barred prior to hearing a motion for summary judgment. Now there's this flip flop into wanting immediate examination for discovery and - after blocking it for the first six months in the action. Re - he refuse - the plaintiff refuses to discuss a discovery plan for six months, he refused to provide an affidavit of documents while referring to my affidavit of documents in this Court, before the Master, to use it in this Court. So my affidavit of document was being used, they were refusing to give theirs, they've only provided it days ago and now it becomes an urgent matter to immediately have full examination for discovery. So that the - this is - this is - this is a - the entire motion is moot. It's been effectively abandoned. And in addition to that - and I was trying to settle it on January 5th - in addition to that I'd like to say the motion was premature and inappropriate, it could have been avoided by a simple consultation, which I invited in writing twice, there was no reason to take up the Court's time, rather than engaging in an exchange, there was no offer to discuss, no offer to meet, no draft proposal ahead of time. This is, I think, a situation where costs should go to one party. Regarding costs, the motion was effectively abandoned such that I believe rule 37.09(3) would apply and payment should be made forthwith.

THE COURT: What costs are you saying you have incurred?

MR. RANCOURT: Where did I – yes, well, I haven't had time to make a formal cost submission, but I estimate, from the two hearings that I've been involved with, where costs were attributed, in one case it was a shorter hearing than this and costs of \$2,000 were attributed. In the other case, it was a long – maybe four hours before the Master where a cost of \$3,000 were attributed. I estimate that in my view 2,500 in costs.

THE COURT: But the other side has counsel, you don't, so the rules are somewhat different. They're incurring costs.

MR. RANCOURT: This is true, but I have been hearing....

THE COURT: Your costs are different.

MR. RANCOURT: this is....

THE COURT: You've incurred certain expenses, presumably.

MR. RANCOURT: This is true, Master, but I have seen described a case law that is applicable in Ontario that established that when law help is used, that is to be counted in costs, and I am getting pro bono help from lawyers. And in one case – the one – the lawyer that's not available this week and most of last week, it's quite expensive. And in addition to that, there is my own time which is significant, and I make up for my lack of experience by putting more time into it and I think that needs to be taken into account. So I think that a fair cost amount would be 2,500 and it – one might consider that it should

- I know that there are different rates, but I think that that would be the lowest rate.

THE COURT: Well, there's also case law that talks about you can't recover your time, as such. You can recover, in some instances, the loss of chargeable time.

MR. RANCOURT: Well there is loss of chargeable time.

THE COURT: Well, yes, you're saying that, but I don't have any evidence of that. I don't have - you haven't provided a bill of costs - you haven't come with that information so....

MR. RANCOURT: I haven't had time. I'm not - I'm not prepared.

THE COURT: Well, but Sir...

MR. RANCOURT: I would be happy to submit....

THE COURT: ...you knew you were coming here today and you knew you would be making this argument, so the point is that rules require the parties to provide cost outlines and it also requires that you come prepared to make the submission on costs. So I'm not...

MR. RANCOURT: Could I....

THE COURT: ...refusing - I haven't made a decision yet, but I'm pointing out to you that there is some difficulty in just picking a number out of the sky.

MR. RANCOURT: I understand it and I would respectfully request....

THE COURT: Particularly when you're self-represented because I have some notion, obviously, of what lawyers are charging hourly rates, but I don't have any idea what costs you've actually incurred or what

business you've turned away or anything like that
so....

MR. RANCOURT: Or how much time the pro bono lawyers
have spent and so on, but I would respectfully ask
to be given some time to make that submission. I've
been at the last minute in all regards with regard
to this....

THE COURT: Well, it won't be necessary unless I
decide I'm going to award you costs and I haven't
decided that yet, so if there's anything else you
want to say about why you should have costs, I'll
hear it.

MR. RANCOURT: Yes, there is one more thing. I made a
formal offer to settle which was rejected almost
immediately and so I'd like to show the Court this
offer to settle. It was made on January 15th, which
is prior to the deadline for the motion record
material.

MR. DEARDEN: Do have another copy?

MR. RANCOURT: Sorry?

MR. DEARDEN: Do you have another copy?

MR. RANCOURT: I do.

MR. DEARDEN: Thank you.

MR. RANCOURT: I believe the relevant rule in that
regard is 49.10(2).

THE COURT: Yes, Mr. Dearden, anything you want to
say about costs?

MR. DEARDEN: Yes, Sir. Costs should be awarded to
the plaintiff, Master, for having to go through what
we had to go through here. The plaintiff - or the
defendant refused to discuss any timetables even
though he agreed, finally, to consent to case

5 management, but he was insisting on me withdrawing the motion for case management, when that, as I indicated earlier, is an order that only you can make and decide to assign the case, whether the parties consent or not. But we also - on January the 20th, Master, where I was responding to Mr. Rancourt wanting to examine University of Ottawa witnesses in his champerty motion, I said:

10 "Your questions below will be dealt with during our appearance before Master MacLeod on January 26th. The first issue regarding your champerty motion will be to set a timeline for the University of Ottawa's motion to intervene. Are you going to consent to the University's motion to intervene?"

15 He's never answered that question. And my second paragraph in that email of January 20th said:

20 "The second issue regarding your champerty motion will be the timeline for the filing of evidence to oppose the champerty motion, cross-examinations, factums, and a hearing date for the champerty motion."

And he wrote me on January 22nd to say:

25 "The hearing of January 26th is not a case management conference, it's the hearing of your motion served on December 6th. I am not prepared to proceed at the January 26th hearing on any matter outside of the four corners of the motion. All other matters are not before the Court."

30

You have ruled today, Master, that there would be case management and there would be a case management conference today so he has lost...

MR. RANCOURT: This is not....

MR. DEARDEN: ...and costs should be awarded....

MR. DEARDEN: Objection. That's not relevant.

MR. DEARDEN: What?

THE COURT: Mr. Rancourt, Mr. Dearden sat and listened to you, you sit and listen to him, thank you. That is exactly relevant. That is precisely the point.

MR. DEARDEN: See - so I'll repeat, Master, his - he opposed having a case conference today to set - to discuss setting timelines for the libel action and the champerty motion. He was warned almost a week ago - he was notified a week ago we were going to deal with these issues before you. He opposed, he lost, costs should be awarded against him.

And secondly, Master, I'm unaware of any cost case where a self-represented litigant can then charge or seek to charge in a bill of costs help they get from law help, but I am familiar with the Ontario Court of Appeal's decision in Fong v. Chan [ph], that a self-represented litigant can be awarded costs if they can demonstrate that they devoted time and effort ordinarily done by a lawyer, and as a result they incurred an opportunity cost by foregoing remunerative activity. Well, you'll recall this witness put in an affidavit in the mandatory mediation motion that he had no income, so he hasn't foregone any remunerative activity whatsoever and

wouldn't - even if you were to say this would be a case to entitle the defendant costs, he isn't entitled to any costs. Those are my submissions, Master. Thanks.

THE COURT: Thank you. Anything to say in reply to that, Mr. Rancourt?

MR. RANCOURT: Yes. There is this statement that I had continually refused to discuss a timetable. That is wrong.

THE COURT: No, Mr. Rancourt, the statement is that the issue that was argued this morning was whether or not we were going to have an immediate case conference and you opposed that quite vigorously and Mr. Dearden's submission is that on the motion that was argued they were successful, they should have costs.

MR. RANCOURT: And as for....

THE COURT: That's what his submission is. I'm giving you an opportunity to respond to that.

MR. RANCOURT: Yes, Master, respectfully, the point of those - those points - the case conference and today and the points to be discussed at it were not part of the motion. The motion only had two points in it and so, please, I draw your attention to the motion itself and it is....

THE COURT: Read paragraph four of the notice of motion, Mr. Rancourt.

MR. RANCOURT: Such further and other relief as counsel may advise and this honourable Court deems just.

THE COURT: Right, and so were you advised that there was going to be a request for an immediate case conference today?

MR. RANCOURT: Not....

THE COURT: Yes, you were...

MR. RANCOURT: I was, but....

THE COURT: ...because you tried to write to me...

MR. RANCOURT: There was....

THE COURT: ...yesterday, Mr. Rancourt.

MR. RANCOURT: But there is a deadline for....

THE COURT: You knew perfectly well that that was going to be discussed today. You came prepared to argue against it. You did argue against it. So I'm prepared to give you a lot of leeway because you're representing yourself, but I'm not prepared to have you turn this into a circus or to try to create procedural issues that don't exist. If the motion hadn't gone ahead, Mr. Dearden would have been perfectly entitled to ask me to use the time for a case conference. And so you knew coming here today that he was going to ask me for that to be done and you opposed that. And you gave me the reasons for that and I've given you my decision on that, which I'm not going to revisit. So I'm only dealing now with costs. You've made a request for costs, his response is that you should not get costs and in fact, they should get costs. So I'll hear what you have to say about that, but it needs to be accurate. So you did know - I'm perfectly well aware that you knew that request was being made and you came here prepared to argue that so don't tell me that you didn't know that. So the issue at the moment is you

can reply to Mr. - Mr. Dearden's doing two things; he's responding to your request for costs and he's asking for costs and I will hear what you have to say about...

MR. RANCOURT: Well, the only...

THE COURT: ...both of those.

MR. RANCOURT: ...thing I could add, given your clarification, Master, is that I was informed in parts, using contradictory messages about what would be discussed in the case management part, if there was one, either on the deadline day or receiving the motion material or after the deadline day for receiving the motion material. And I've had a very demanding week and - and prior to that and this week the lawyer that normally helps me is not available, so that's the situation. I believe this is a case where the deadlines should be important, given the fact that I'm self-represented and that I needed that extra time. It is also in good faith - unaware that you could transform a motion in this way, using that paragraph four and make it into something quite different from the original.

THE COURT: All right. Thank you. So I've endorsed as follows, I've said:

"Mr. Rancourt asked to make submissions on costs. He argues that the motion should not have been required because he had previously agreed to case management. And he argues that the plaintiffs have refused to provide information, such as the information at tab H of the motion record - his motion record. This, however, was not the issue argued today. While it is true that the motion to schedule a summary judgment motion was not argued, Mr. Rancourt

knew perfectly well that the plaintiff was seeking an immediate case conference and Mr. Rancourt opposed that. It took the better part of an hour to deal with the argument against a case conference and...

5 Sorry.

...and to hear cost submissions. In my view, the plaintiff has been successful on the matter that was argued and the plaintiff would be entitled to costs of the morning.
10 Court...plaintiff shall have costs of the portion of the morning devoted to this argument, fixed at \$300."

So I'll get you a copy of this and....

15 MR. RANCOURT: I'm sorry, I was thinking about the time when you said the actual statement of the ruling regarding costs. I didn't catch....

THE COURT: \$300 costs you are to pay to the plaintiff. Okay? I will get you a copy of this and you'll be able to read it in just a moment. So will
20 - let's take a short break and we'll come back at - well, we'll take a five-minute break and then we'll come back and deal with the scheduling issues.

MR. DEARDEN: Thank you, Master.

25 R E C E S S

[11:07 a.m.]

U P O N R E S U M I N G

[11:25 a.m.]

30 THE COURT: Okay, so we're not going to be able to deal with all of the issues that - because I have another matter at 12 o'clock in any event. But I think that it is useful to at least deal with some of them. So it would appear as if the champerty

motion really has to go first and as well if we can deal with that, that means Mr. Doody [ph] doesn't have to stay any longer than necessary.

5 So Mr. Rancourt, I had not realized when we - when I heard earlier that you had intended to summon witnesses to be examined in aid of your motion and that those include officials of the University of Ottawa, so under those circumstances the University would have standing, in any event, to oppose your summons, so I'm not sure that the question of intervention, per se, is as important, but clearly if you proceed with that plan and the University wishes to make any argument as to why those summons to witness shouldn't be enforced, they would have the opportunity to do that. So that would appear to be one of the first issues since there's a clear intention to examine the witnesses in aid of the motion, and then we'd have to talk about how that's going to work. That might give rise, I suppose to another motion if that's what you're planning to do.

10

15

20

MR. RANCOURT: May I ask for just a few clarifications? I've never done a case conference...

25 THE COURT: Sure.

MR. RANCOURT: ...before. So I can see, and my understanding is that there is a Court transcript of the case conference?

30 THE COURT: No. There is a reporter present because it's our standard practice to have a reporter present for self-represented individuals and - but it is not - and so there is a transcript potentially

5 available. It's not available as of right - for the
obvious reason that there's no evidence being taken,
so ordinarily in a trial the reporter transcribes
the evidence and then if you order a transcript you
get the transcript of the evidence. You don't
necessarily get a transcript of arguments and so
forth unless the judge approves that. So similarly,
with the transcripts in these circumstances, if you
should feel the need to order a transcript, then you
10 would have to make that request and it would have to
be approved by me before I released it. That would,
I suppose, depend on how appropriate I thought it
was. What you will get from a case conference is my
endorsement which records basically what we talked
about and the order. And it's the order that's
15 really the important part. Now, there are
situations under rule 77, as you'll have read, that
permit me to hear a motion without materials or to
dispense with the need for formal orders. Part of
the purpose of that is to cut down on the amount of
unnecessary expense, but it's not the purpose. Of
course, to undermine anybody's procedural rights to
be heard legitimately on legitimate issues so I'll
just make that clear at the outset. So the answer
25 to your question about transcripts is yes and no;
transcript is available with the approval of the
Court, but it's not automatic in the way that a
transcript of evidence is.

30 MR. RANCOURT: So in the way that a transcript for an
actual motion hearing would be, for example.

THE COURT: Yes. Well again, we're off and talking
about different things. So when you cross-examine

5 on an affidavit, the evidence that can be put before the Court is the affidavit and the cross-examination or such portions of the cross-examination as you choose to put in. That's a transcript of a cross-examination and that's a different thing. There may or may not be a reporter present for the argument of the motion for exactly the same reason; just to keep track of things.

10 MR. RANCOURT: So this case conference is relatively informal, as I understand it, compared to a motion hearing.

THE COURT: Right.

MR. RANCOURT: And one thing I would like to clarify because it just occurred - we just had the motion...

15 THE COURT: Yes.

MR. RANCOURT: ...I was not given a copy of Mr. Dearden's cost submissions and I don't even know if one was given to the Master. I'd just like to clarify that.

20 THE COURT: It wasn't

MR. DEARDEN: I didn't do one.

THE COURT: That's why he only got \$300 and - which is a nominal amount.

25 MR. RANCOURT: Okay, so then it was a nominal amount because there was no cost submission.

THE COURT: Right. Well, there were cost submissions - it was an argument about costs, but there was no costs outline. You're quite right.

30 MR. RANCOURT: Okay. The next point I want to bring up is the following. Given my personal experience of the motion that we just heard, I would like now every part of these - this action, including the

case conference to be bilingual. I'm prepared to proceed in that way today. I don't know what the circumstances are with the other people here.

5 THE COURT: I think if you look at the French Language Services Act you will see that you are entitled to make that request, but you'd have to make it in advance and you already advised me this morning that you were prepared to proceed at case conferences in English. All of your materials are
10 in English. All of your submissions have been English. You're quite entitled to request a bilingual hearing at a later step, but I'm not going to adjourn this in order to do that.

15 MR. RANCOURT: I have my notes here and I recall saying that I was in agreement with proceeding in English only for now, and that - for me, that means until I estimate that it's not working.

20 THE COURT: You recall I asked you to clarify that and you indicated to me that you were prepared to proceed with the case conferences in English and that you would reserve your right about motions, but that you wanted the trial to be before a bilingual official. I didn't ask you about what that meant because we would get to that in due course, but as
25 you can anticipate, there are various ways in which a bilingual hearing can take place. There are hearings that take place entirely in French - which in my mind aren't really bilingual, but that would be appropriate if all the materials were in French and everyone was speaking French - that doesn't
30 change the scheduling at all. There are procedures that take place in both languages in which everyone

involved speaks both languages - that's not really a problem. There are proceedings in which everything has to be simultaneously translated and worked through interpreters - that lengthens the proceeding so....

MR. RANCOURT: Thank you, Master, I am - I understand that I gave you those clarifications....

THE COURT: And we'll need to - we'll need to clarify that for - sorry, we'll need to clarify that for scheduling purposes.

MR. RANCOURT: Yes. I understand that I gave you those clarifications, but I now feel that this has to proceed in French for me. And I have here the copy of the Ministry of - Ministry of the Attorney General guidelines about how to advise the Court and one of the points says,

"Making an oral statement to the Court during an appearance in the proceeding that expresses the desire that the proceeding be conducted as bilingual."

There's nothing here that says it has to be done in advance. This is a legitimate way to make that known to the Court and I have copies here...

THE COURT: Um-hmm.

MR. RANCOURT: ...if you want to see it. These are the Attorney General's rules.

THE COURT: Sir, I understand absolutely your right to a hearing in French. I have absolute respect for the right of parties to be heard in the language of their choice, but you have already today asked that this case conference be adjourned and you indicated

at that time that you were quite content that it proceed in English so I'm not going to adjourn the case conference for this purpose today. I will certainly arrange...

MR. RANCOURT: Well....

THE COURT: ...that in future they be before a bilingual judicial officer; my colleague, Master Roger is completely conversant in French.

MR. RANCOURT: Je - moi je suis prêt à continuer. Je suis prêt à faire ceci en français, mais je refuse de continuer en anglais.

THE COURT: Oui. C'est votre choix.

MR. RANCOURT : Puis j'ai le droit d'exercer de choix.

THE COURT: Si vous désirez parler en français, je ne suis pas parfaitement bilingue, mais je vous comprends, monsieur.

MR. RANCOURT: D'accord, alors ça va être en français.

MR. DEARDEN: Master, I just want to put on record if I could - that my recollection is exactly what your recollection was, and that was Mr. Rancourt indicated to the Court that he was prepared to have the proceedings today in English and now he has resiled from what he has stated to the Court.

MR. RANCOURT: Ca s'appelle changer d'idée.

MR. DEARDEN: And I'll also put on the record that I am not bilingual. Thank you.

MR. DOODY: And for record, Master, neither am I.

MR. DEARDEN: But I do want to proceed with the case management conference, Master.

MR. DOODY: As do I.

MR. RANCOURT: J'aimerais ajouter quelque chose, si c'est possible.

THE COURT: Un moment, s'il vous plait. Je juste vérifier si Maitre - Monsieur...Roger est disponible. I'm just going to see if my colleague is available to take over the case conference in which case I will ask him to do that. I understand that issue - Mr. Dearden, Mr. Doody, are the two of you available this afternoon?

MR. DOODY: I am, Master.

MR. DEARDEN: Yes, Master.

THE COURT: Mr. Rancourt?

MR. RANCOURT: I am not.

THE COURT: Well, you may have to be.

MR. DEARDEN: For the record, Master, I have a partners' meeting at 1:30 and I will not attend that so that I can be here this afternoon. I also note that Mr. Rancourt doesn't have any labour grievance hearing this afternoon so....

MR. RANCOURT: If needed, I will give my reasons. Si c'est nécessaire.

THE COURT: Yes, what do you have that would interfere with you being in attendance this afternoon?

MR. RANCOURT: Oui donc, j'aimerais expliquer que je fait un émission de radio à toutes les semaine - tous les jeudis, en fin d'après-midi et cette fois ci, les deux invités on annulé et donc je suis obliger de produire une émission de radio pour être en ondes à cinq heures aujourd'hui. Ca demande beaucoup de temps. Je dois faire la préparation au studio, je dois choisir la musique exclusivement.

5 Normalement c'est un émission de radio qui implique
des invités qui sont interviewés, cette fois ci les
deux invités on du annuler et ils n'ont pas
confirmer, et donc je dois être entièrement
responsable pour cette émission de radio cet après-
midi et je vais prendre plusieurs heures pour
préparer cet émission. Et l'émission de radio que
j'anime depuis cinq ans est un émission
10 à la quelle il y a des - de l'argent d'impliquer,
dans le sens qu'il y a des annonces commanditaires
qui sont jouées pendant l'émission. Je suis
responsable et je suis le - celui qui produit
l'émission et qui le onde à - pour cet émission que
j'anime depuis cinq ans.

15 THE COURT: Quand - quelle date c'est l'émission?

MR. RANCOURT: Tous - tous les jeudis.

THE COURT: Ordinarily, I would think we wouldn't
need more than an hour to deal with the scheduling
issues, but that's highly unpredictable, as we've
20 seen this morning.

MR. DEARDEN: It shouldn't take more than five
minutes, Master, to schedule examinations for
discovery.

THE COURT: Well, the problem that you have and as
I've tried to explain Mr. Rancourt earlier, is that
25 unless I make an order there's nothing preventing
him from serving you notice and then you must
attend, so the order was intended - the scheduling
was intended to determine whether the discovery
should be delayed for the cross-examination or leave
30 you to your own devices in terms of proceedings.

There is no order inhibiting the right of a party to trigger discoveries.

MR. DEARDEN: But as you say, Master, then there's a possibility that Mr. Rancourt will, for some reason, not show up and then require me to come to Court and compel his attendance and waste all that time and money, but I'm....

MR. RANCOURT: Je vais m'objecter à cette caractérisation. Je me suis toujours montrer à tous les dates. J'ai jamais demandé que les dates soient remises.

THE COURT: Un moment, monsieur. Yes, Mr. Dearden?

MR. DEARDEN: So, Master, I still think that the libel action and the champerty motion can proceed in parallel. The dates may change, but the immediate issue - and it's in play because we are in a case conference is that it be done - or examinations for discovery can be set and surely Mr. Rancourt can produce his copies of the documents he's listed in schedule A, which way back in the fall he was demanding that we do. And he's got our copies, but he has yet to give me his copies. That's a pretty easy step to fulfill, and then, you know, February 2nd, I haven't heard any reason why we can't do examinations for discovery February 2nd and 3rd.

M. RANCOURT: J'aimerais demander des clarifications.

THE COURT: C'est pas nécessaire parce que....

MR. RANCOURT: Je n'entends pas. Je m'excuse.

THE COURT: I'm not going to decide that question right at the moment, so it's not necessary to - okay, what I'm going to do is I'm going to adjourn the case conference the date to be set before a

bilingual Master of Judge. I'm going to require everyone to check with my office - with Ms. Eastbrooks this afternoon at 3:30 because it may be possible to do it this afternoon at 3:30 or shortly thereafter and I'll look into that possibility and get instructions to you. If it's not then, then we'll set a date for the case conference to proceed. Mr. Rancourt, I will caution you as well that the question of wasted costs will be dealt with. I think it's appropriate that that be dealt with by a bilingual officer and hear you in French because I don't want to make another issue out of this, but in my view, changing - having elected to proceed in one language and then changing your mind in the middle of the proceeding is not an appropriate way to do it. So it won't be me and I'll leave it to the counsel as well to consider how they want to deal with this in future if the proceedings do proceed bilingually. Obviously, all of the evidence to date has been in English and all of the materials are in English and the alleged defamation is in English and all the pleadings are in English so - and what would need to be - I suppose that all that happens is we have to have an interpreter present for any submission that are made in French or vice versa.

MR. DEARDEN: And an order, Master, that the transcription of any examinations be English and French.

THE COURT: Well, that again, the parties can decide whether that's necessary because that adds an additional cost, which Mr. Rancourt, you may have to

bear in many instances, and you may very well have to bear at the end of the day.

MR. RANCOURT: Est-ce que je peux faire quelques commentaires, s'il vous plait? Premièrement, il y a déjà des évidences dans cette cause qui sont en français et des experts témoins aussi qui sont probablement francophones. Et aussi, je m'oppose fortement à ce que je sois obligé de venir ici à 3h30 parce ce que ça va me causer de ne pas pouvoir....

THE COURT: Par téléphone.

MR. RANCOURT: Je ne - excusez-moi, vous voulez qu'il y ait une conférence par téléphone?

THE COURT: C'est possible d'avoir une conférence par téléphone et - mais vous vérifiez avec les greffiers si la conférence continuera cet après-midi ou à une autre date à 3:30, right?

MR. RANCOURT: Mais cela...

THE COURT: Par téléphone.

MR. RANCOURT: ...cela va prendre mon temps de préparation pour mon émission...

THE COURT: Well....

MR. RANCOURT: ...donc j'ai besoin absolument - j'ai été occupé toute la semaine....

THE COURT: You've got all the time between now and then. All I'm ordering at this point is that at 3:30 you check, and I'm just cautioning you, there may be a case conference this afternoon. It may proceed by telephone. I don't know that answer to that because it depends on the availability of someone to do it and as it happens - as it happens, several of our bilingual judges are otherwise

occupied; Mr. Justice Beaudoin, who I would normally speak to, is in Vancouver and Mr. Justice L'ORoger [ph] is in Kingston, as everybody knows, and Master Roger is in Family Court at the moment, but he may be available this afternoon.

MR. DOODY: Master MacLeod, there is a difficulty with my appearing before Master Roger.

THE COURT: I appreciate that and you'll have to consider whether that's a difficulty and as will he, and so that may be the complicating factor.

MR RANCOURT: Maître, il y a un autre point important. Mon téléphone est à la maison chez moi et je dois être en studio cet après-midi et le transport à cette heure de trafic est impossible et ça va me causer de manquer mon émission.

MR. DEARDEN: Then let's do it now.

MR. RANCOURT: Si - si je dois - si je dois être à un téléphone à 3h 30 ça va me causer des sérieux problèmes, et à moi et à la station de radio.

MR. DEARDEN: Then a solution, Mr. Rancourt, with respect, would be let's do as you said you were...

MR. RANCOURT: Je ne comprends pas.

MR. DEARDEN: ...going to do. I don't care if you're not listening to me, I'm putting it on the record. You can do what you said you were going to do which was to have this case conference in English and we can proceed with the case conference right now and you won't miss your radio broadcast and your interviews with your two guests. We can proceed right now.

MR. RANCOURT: Ce commentaire est inapproprié.

MR. DEARDEN : No, it isn't.

MR. RANCOURT: Oui, absolument.

MR. DEARDEN: I'm not going to argue with you. We can proceed right now. Will you?

MR. RANCOURT: En français et pendant un certain temps je dois quitter à 1h30 au plus tard.

THE COURT: Well, I will check again to see if it's possible to have someone available, but there is a difficulty - a potential difficulty with Master Roger doing it and I attempted to find a judge and that was not possible on short notice. I may be able to get a judge this afternoon or early next week or tomorrow. Anyway, I'll get you a copy of my endorsement.

MR. RANCOURT: Pourquoi pas me donner le temps d'amener ces suggestions de M. Dearden, pour les montrer à un avocat pour que je puisse décider si c'est raisonnable dans les temps qui sont suggérés - s'il y a des étapes intermédiaires qui doivent venir ou qui pourraient venir, s'il y a quelque chose que je devrais faire, et si l'ordre doit être changé? Pourquoi pas me donner le temps de consulter mon avocat...

THE COURT: Monsieur....

MR. RANCOURT: ...avant de m'imposer dedans.

THE COURT: Monsieur Rancourt, je vous comprends, mais - I do not wish to mislead you by suggesting that I'm competent to conduct a bilingual hearing. I am not. I speak French at an intermediate level, at best and so I'm not going to pretend to hear any argument in French. You've asked for the hearing in French and I'm going to arrange for the hearing to be in French - or at least bilingual and then the

5 judge or the master dealing with it will deal with
it, including I may add, any suggestion that it's an
abuse of process to try to get around my order made
this morning. I'm certain they'll be happy to hear
that argument. And I say that not because of any
suggestion that you don't have the right to be heard
in French, which you do evidently, but simply
because you may be abusing the right by telling me
one thing and then changing your mind. And I will
10 get you a copy of this endorsement in a moment.

MR. DEARDEN: And I am available any time tomorrow,
Master, should that be the option instead of the
3:30 option.

15 THE COURT: If I can - and Mr. Rancourt, is there
where you can be reached - a phone number that you
can reached at so that in the event that I know in
advance that there's no point in talking at 3:30, I
can let you know that so it doesn't interfere.

20 MR. RANCOURT: Je n'ai pas un téléphone cellulaire,
j'ai juste mon téléphone à la maison et je dois - je
ne peux pas être à la maison cet après-midi, donc
c'est difficile. Donc je vais peut-être être à la
maison quelques instants entre maintenant et puis le
début de mon travail à la station.

25 MR. DEARDEN: There's no phone at the station?

MR. RANCOURT: Oui.

MR. DEARDEN: Well, what's the number?

MR. RANCOURT: J'ai juste le numéro dans le studio.

THE COURT: You know what that is?

30 MR. RANCOURT: Non, je l'ai pas ici avec moi. Non,
je m'excuse, je ne connais pas les numéros....

THE COURT: Adresse courriel?

MR. RANCOURT: Pardon?

THE COURT: Do you have an email address?

MR. RANCOURT: Oui. J'ai un adresse courriel. C'est denis.rancourt@gmail.com.

THE COURT: Well, I'll attempt to find out over the lunch hour whether I....

MR. RANCOURT: Je peux vérifier mon courriel cet après-midi.

MR. DOODY: As for tomorrow, Master, I'm available until 11:00 a.m. If it would be thereafter, I'd attempt to find somebody else.

THE COURT: Thank you. I'll get you a copy of my endorsement which you can just get from Cathy [ph] on the way out.

MR. DEARDEN: Thank you, Master.

MR. DOODY: Thank you, Master.

MR. RANCOURT: Donc, si je pense bien, j'attends un courriel?

THE COURT: S'il est possible pour moi de vérifier qu'il n'est pas nécessaire d'avoir une conversation à 3h30, je vous envoie un courriel.

MR. RANCOURT: Si c'est annuler, vous m'envoyez un courriel...

THE COURT: Oui.

MR. RANCOURT: ...c'est ça?

THE COURT: Oui. Oui.

MR. RANCOURT: Et si je ne reçois pas de courriel, vous....

THE COURT: Vous devriez téléphoner à 3h30.

MR. RANCOURT: À 3h30. Je téléphone à 3h30?

THE COURT: Oui.

MR. RANCOURT: D'accord.

MR. DEARDEN: Thank you.

C O U R T A D J O U R N E D

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Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

5

I, Linda A. Lebeau, certify that this document is a true and
accurate transcript of the recording of Joanne St. Lewis v.
Denis Rancourt in the Superior Court of Justice held at 161
10 Elgin Street, Ottawa, Ontario taken from Recording No. 0411-51-
2012-01-26 which has been certified in Form 1.

15

MAR 05 2012

Date

Linda A. Lebeau

Linda A. Lebeau

20

25

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

TRANSCRIPT OF PROCEEDINGS

held in Ottawa, Ontario
on Wednesday, February 8, 2012

APPEARANCES:

Mr. R. G. Dearden
Mr. P. Doody
Ms A. Semenova

for the Plaintiff

Mr. D. Rancourt

unrepresented, for the Defendant

International Reporting Inc.

41 - 5450 Canotek Rd.

OTTAWA, Ontario K1J 9G2

Tel. 613 724 7653

1 Ottawa, Ontario

2 --- Upon commencing on Wednesday, February 8, 2012

3 at 9:00 a.m.

4 JUGE BEAUDOIN: Bonjour.

5 REGISTRAR: [Inaudible]. Please
6 be seated. Veuillez vous asseoir, s'il vous plaît.

7 JUGE BEAUDOIN: Il n'y a pas
8 d'autres lumières? Est-ce que M. Dearden est au
9 téléphone?

10 LE GREFFIER: Pas à ce moment-ci.

11 JUGE BEAUDOIN: O.K. On va faire
12 un peu le tour de rôle, savoir qui est présent.

13 L'interprète est ici?

14 LE GREFFIER: Je viens tout juste
15 de confirmer avec madame l'interprète qu'il y a bel
16 et bien un interprète qui a été cédulé aujourd'hui,
17 mais qu'il n'est pas... Il est en chemin à la
18 salle ici.

19 JUGE BEAUDOIN: O.K. Est-ce que
20 vous acceptez entre-temps que je fasse la
21 traduction moi-même?

22 Do you accept that I... Okay?

23 ME ST. LEWIS: Thank you. Merci.

24 JUGE BEAUDOIN: Est-ce que vous
25 comprenez le français, tout le monde de ce côté-là?

26 MR. DOODY: Pas moi.

1 JUGE BEAUDOIN: O.K.
2 ME ST. LEWIS: Il est unilingue,
3 mais moi je suis bilingue.
4 JUSTICE BEAUDOIN: O.K.
5 MR. DOODY: I understand Mr.
6 Dearden doesn't either.
7 JUSTICE BEAUDOIN: Mr. Dearden
8 doesn't?
9 MS J. ST-LEWIS: No.
10 JUSTICE BEAUDOIN: And you are
11 Anastasia?
12 MS A. SEMENOVA: Anastasia
13 Semenova.
14 JUGE BEAUDOIN: Semenova. Vous
15 êtes bel et bien Monsieur Rancourt?
16 M. D. RANCOURT: Oui. Oui,
17 Monsieur le juge.
18 JUSTICE BEAUDOIN: Et vous êtes?
19 And you are?
20 MR. J. HICKEY: I'm an observer.
21 JUSTICE BEAUDOIN: Yeah, and your
22 name?
23 MR. J. HICKEY: I'm a member of the
24 public.
25 JUSTICE BEAUDOIN: Yeah. Your
26 name, please?

1 MR. J. HICKEY: Is my name
2 required?

3 JUSTICE BEAUDOIN: Pardon?

4 MR. J. HICKEY: Is my name
5 required for the court record?

6 JUSTICE BEAUDOIN: Yeah. This is a
7 case conference and this is just normally between
8 the parties and anybody else can come in, with the
9 permission of the Court, as long as nobody else
10 objects. So I'm just wondering who you are.

11 MR. J. HICKEY: My name is Joseph
12 Hickey.

13 JUSTICE BEAUDOIN: Joseph?

14 MR. J. HICKEY: H'm.

15 JUSTICE BEAUDOIN: And how do you
16 spell that?

17 MR. J. HICKEY: J-o-s-e-p-h.

18 JUSTICE BEAUDOIN: J-o-s-e-p-h,
19 and?

20 MR. J. HICKEY: H-i-c-k.

21 JUSTICE BEAUDOIN: H-i-c-k?

22 MR. J. HICKEY: E-y.

23 JUSTICE BEAUDOIN: E-y, all right.

24 Thank you, Mr. Hickey.

25 MR. DOODY: Your Honour, I should
26 say that perhaps I ought to have put my gowns on

1 this morning, and I apologize.

2 JUSTICE BEAUDOIN: Normally, not
3 for a case conference.

4 MR. DOODY: I feel underdressed.

5 JUSTICE BEAUDOIN: Ms Semenova is
6 overdressed, and maybe I am too, but...

7 En attendant Maître Dearden, moi
8 j'ai oublié quelque chose dans mon bureau. Je
9 reviens dans deux minutes.

10 LE GREFFIER: O.K.

11 JUSTICE BEAUDOIN: I'm coming back
12 in two minutes. I forgot... Mr. Rancourt sent an
13 e-mail, and I don't think I have that.

14 --- RECESS AT 9:04 A.M.

15 --- UPON RESUMPTION AT 9:05 A.M.

16 LE GREFFIER: All rise. Veuillez
17 vous lever.

18 JUSTICE BEAUDOIN: Mr. Dearden is
19 on the phone?

20 LE GREFFIER: Je vais ouvrir la
21 séance.

22 JUSTICE BEAUDOIN: O.K.

23 LE GREFFIER: The Court is now
24 reconvene. Please be seated. Veuillez vous
25 asseoir.

26 JUSTICE BEAUDOIN: Mr. Dearden?

1 MR. DEARDEN: Right.

2 JUSTICE BEAUDOIN: Okay. So I'm
3 Justice Beaudoin. We have Mr. Rancourt, Mr. Doody,
4 Ms St. Lewis, your student, Anastasia Semenova, Mr.
5 Rancourt and an observer by the name of Joseph
6 Hickey.

7 We also have the reporter, but no
8 interpreter yet, so... He's en route, so I will do
9 my best to interpret, with the permission of all
10 the parties. Mr. Rancourt is saying okay. All
11 right.

12 So there are a number of things
13 that need to be time-tabled today. So my agenda is
14 examinations for discovery on the libel action, the
15 champarty motion, and Mr. Rancourt sent an e-mail
16 to Ms Esterbrook where he talks about an open-court
17 motion, which I'm not clear what that might be.

18 He has also indicated that there
19 may be, in advance of discoveries, either a motion
20 to cross-examine on the affidavit of documents, and
21 then there is a leave to intervene.

22 Is there anything else?

23 Donc les interrogatoires au
24 préalable dans la poursuite de libelle
25 diffamatoire, la requête de M. Rancourt qui traite
26 de la question de champartie...

1 En tout cas, Monsieur Rancourt,
2 vous avez... C'est votre mot. « Time-table for
3 open-court motion ». Ça, je ne suis pas tellement
4 certain qu'est-ce que vous dites par ça.

5 Ensuite, une motion pour faire des
6 contre-interrogatoires pour l'affidavit de
7 documents et la motion de la part de l'Université,
8 qui cherche à intervenir dans la motion qui traite
9 de la question de champartie.

10 Those are the issues?

11 MR. DOODY: Yes, Your Honour. And
12 the motion to intervene is in... It's a motion to
13 intervene in the champarty motion.

14 JUSTICE BEAUDOIN: Oh!

15 MR. DOODY: Not in the action.

16 JUSTICE BEAUDOIN: If we can start
17 with that one?

18 On pourrait commencer avec celui-
19 là? Tout d'abord, « why is leave required »?

20 MR. DOODY: The rules indicate that
21 leave can be obtained to intervene.

22 JUSTICE BEAUDOIN: Rule 37.07(1)
23 requires the motion to be served on any party that
24 is affected.

25 MR. DOODY: It does. The case law
26 that I have looked at, Your Honour... I'm not to

1 argue against myself here but the case law I have
2 looked at suggests that a motion should have...
3 They haven't actually discussed...

4 JUSTICE BEAUDOIN: If Mr. Rancourt
5 has to serve... Mr. Rancourt must serve the
6 University---

7 MR. DOODY: They haven't actually
8 discussed...

9 JUSTICE BEAUDOIN: ---with the
10 motion.

11 MR. DOODY: You're right.

12 JUGE BEAUDOIN: La règle est très
13 claire, Monsieur Rancourt. Lorsqu'on apporte une
14 motion, il faut la signifier à toute partie qui
15 pourrait être affectée par l'ordonnance qui est
16 prévue.

17 Donc dans ce cas-ci, ça, ça
18 comprend nécessairement l'Université d'Ottawa,
19 parce qu'on cherche d'annuler l'entente entre Me
20 St. Lewis et l'Université, hein? C'est ça?

21 M. D. RANCOURT: Je ne suis pas
22 certain de comprendre. Vous dites qu'il y a eu une
23 anomalie au niveau des procédures par rapport à
24 comment cette motion a été proposée?

25 JUGE BEAUDOIN: Oui, parce que...

26 MR. DEARDEN: Sorry, Your Honour.

1 I can't hear.

2 JUSTICE BEAUDOIN: All right. Mr.
3 Rancourt is asking if I've said there is a
4 procedural error with respect to his champarty
5 motion.

6 I'm just going to repeat. The
7 Notice of Motion shall be served, Rule 37.07(1), on
8 any party or other person who will be affected by
9 the Order sought, unless these rules provide
10 otherwise.

11 The case law is clear. The motion
12 seeks to affect an agreement that was entered into
13 between Ms St. Lewis and the University.

14 The University is a party. It has
15 to be served. So the issue standing is a non-
16 issue, Mr. Doody. No motion is necessary. If you
17 are served, implicit in that is the right to appear
18 to make representations.

19 MR. DOODY: I'm content with that,
20 obviously, Your Honour.

21 M. D. RANCOURT: Mais je ne
22 comprends pas, et je crains qu'il y a quelque chose
23 qui n'est pas correct parce que l'action est une
24 action privée entre le professeur St. Lewis et moi-
25 même.

26 JUGE BEAUDOIN: H'm.

1 M. D. RANCOURT: Et l'Université se
2 dit concernée par ma motion pour « champarty » dans
3 cette action privée, donc l'Université propose de
4 faire une motion pour avoir le droit d'intervenir
5 dans cette action privée.

6 JUGE BEAUDOIN: C'est ça. C'est
7 parce que vous voulez... Vous dites que c'est une
8 poursuite privée---

9 M. D. RANCOURT: Oui.

10 JUGE BEAUDOIN: ---entre vous et
11 Mme St. Lewis, et que l'Université n'a pas lieu de
12 s'impliquer dans cette affaire-là.

13 M. D. RANCOURT: C'est...

14 JUGE BEAUDOIN: Parce qu'ils
15 fournissent les frais, payent les frais de madame
16 ici.

17 M. D. RANCOURT: Oui. Ça, c'est la
18 motion pour « champarty ».

19 JUGE BEAUDOIN: O.K.

20 M. D. RANCOURT: Oui, oui.

21 JUGE BEAUDOIN: Parce que votre
22 motion vise l'entente,---

23 M. D. RANCOURT: H'm.

24 JUGE BEAUDOIN: ---donc il faut
25 signifier la motion à l'Université et l'Université,
26 qui fait partie de cette entente, a le droit

1 automatiquement à faire des représentations.

2 M. D. RANCOURT: Ah!

3 JUGE BEAUDOIN: Il va sans dire,
4 O.K.? C'est automatique. Je peux vous citer une
5 cause où effectivement il y a eu une ordonnance
6 sans un préavis à la partie qui était impliquée,
7 associée, et l'ordonnance était nulle.

8 Donc ça ne donne rien d'avoir une
9 motion qui traite d'une entente entre Mme St.
10 Lewis, Me St. Lewis, et l'Université, si
11 l'Université n'a pas l'occasion de faire des
12 représentations.

13 M. D. RANCOURT: Ah.

14 JUSTICE BEAUDOIN: So I'm just
15 saying, Mr. Dearden, that I do not see where it is
16 necessary for a leave to intervene.

17 37.07(1) requires the Notice of
18 Motion to be served on any party who may be
19 affected by the Order. Clearly, that is the
20 University of Ottawa.

21 M. D. RANCOURT: Donc ça, c'est
22 quelque chose que j'aurais dû faire.

23 JUGE BEAUDOIN: Vous auriez dû le
24 faire, mais...

25 M. D. RANCOURT: J'aurais dû...

26 JUGE BEAUDOIN: N'inquiétez-vous

1 pas tellement, Monsieur Rancourt. C'est souvent le
2 cas que les avocats manquent de le faire.

3 M. D. RANCOURT: D'accord.

4 JUGE BEAUDOIN: Moi quand j'ai vu
5 le cahier, le dossier de motion de la part de M.
6 Doody, ce n'est pas nécessaire.

7 M. D. RANCOURT: D'accord.

8 JUGE BEAUDOIN: C'est implicite
9 dans la Règle. On leur donne un avis pourquoi?
10 O.K.?

11 M. D. RANCOURT: Donc...

12 JUSTICE BEAUDOIN: Okay. And we
13 now have the interpreter. Who requires
14 translation? From what language into...

15 MS ST. LEWIS: French into English.

16 JUSTICE BEAUDOIN: It would be Mr.
17 Doody and Mr. Dearden, so we cannot do this
18 simultaneous, we will have to do it... So when I
19 say something in French, I will just ask you to
20 translate into English.

21 INTERPRETER 1: I will have to
22 translate it on the record too, Your Honour?

23 JUSTICE BEAUDOIN: Yes.

24 INTERPRETER 1: Okay.

25 JUSTICE BEAUDOIN: All right?

26 INTERPRETER 1: H'm.

1 M. D. RANCOURT: Puisqu'on est
2 toujours... Monsieur le juge, puisqu'on est
3 toujours sur cette question de la motion pour
4 intervenir, j'aimerais demander quelques
5 précisions.

6 MR. DEARDEN: I cannot hear him,
7 Your Honour.

8 JUSTICE BEAUDOIN: Okay. But the
9 important thing is going to be for... Polycom is
10 not working?

11 THE REGISTRAR: The call was placed
12 through judge's chambers, so I just forwarded to
13 the telephone here. My understanding was that the
14 call was going to come through Polycom, but I
15 believe that Mr. Dearden might not have that
16 number.

17 What we could do, and it possibly
18 might be more efficient, is if I place the call
19 from the Polycom.

20 JUSTICE BEAUDOIN: Then it's long-
21 distance?

22 THE REGISTRAR: We can make long-
23 distance phone calls.

24 JUSTICE BEAUDOIN: Jamaica, I
25 think?

26 THE REGISTRAR: I think we can.

1 JUSTICE BEAUDOIN: Is there a
2 number he can call?

3 THE REGISTRAR: I have a phone, my
4 cell phone, which is 613, and it probably won't be
5 long-distance to you but it should be long-distance
6 to me.

7 JUSTICE BEAUDOIN: Okay. All
8 right. You're prepared to do that?

9 MR. DEARDEN: Okay.

10 JUSTICE BEAUDOIN: So if you can
11 give that number to the registrar?

12 MR. DEARDEN: Because I can hear
13 him crystal clear.

14 JUSTICE BEAUDOIN: Yeah, because...

15 MR. DEARDEN: 613-858-9378.

16 THE REGISTRAR: Okay.

17 JUSTICE BEAUDOIN: So hang up, and
18 we will call you.

19 THE REGISTRAR: Right. And Mr.
20 Dearden...

21 MR. DEARDEN: Yeah.

22 THE REGISTRAR: If for some reason
23 you don't hear from us in the next three, four
24 minutes, maybe you can just call the judge's
25 receptionist again.

26 MR. DEARDEN: 239-1400?

1 JUSTICE BEAUDOIN: Yeah.

2 THE REGISTRAR: Correct.

3 MR. DEARDEN: Yes, will do.

4 THE REGISTRAR: Thank you.

5 JUSTICE BEAUDOIN: Let's try the

6 Polycom, because that doesn't work.

7 CALLING MR. DEARDEN THROUGH

8 POLYCOM

9 MR. DEARDEN: Rick Dearden.

10 JUSTICE BEAUDOIN: Okay. We can

11 hear you. We're on the Polycom, that should be

12 better.

13 I'm going to ask the interpreter

14 to come and sit next to Mr. Rancourt, because he's

15 the one who will be speaking French, and myself, so

16 you are going to be between the two of us, all

17 right?

18 INTERPRETER 1: Okay.

19 JUSTICE BEAUDOIN: So the question

20 we have left, I think...

21 Monsieur Rancourt, vous avez une

22 question à propos de la procédure?

23 M. D. RANCOURT: Non, c'est plutôt

24 une clarification par rapport à cette motion pour

25 intervenir, qui maintenant n'est plus nécessaire.

26 INTERPRETER 1: Mr. Rancourt, you

1 had a question about the procedure?

2 No, it was a question about an
3 intervenor status, which we have discussed.

4 JUSTICE BEAUDOIN: It is not
5 necessary.

6 INTERPRETER: Which is not
7 necessary.

8 M. D. RANCOURT: Et donc à la
9 place... Donc cette motion n'a plus lieu, ces
10 documents n'ont plus lieu et à la place, si je
11 comprends bien, il y aura des documents qui seront
12 soumis dans la motion pour « champarty »?

13 INTERPRETER 1: So that motion will
14 no longer take place, those documents are no longer
15 necessary and they will be transferred for the
16 motion for champarty.

17 JUGE BEAUDOIN: Effectivement,
18 Monsieur Rancourt, vous devrez signifier la motion
19 pour annuler l'entente entre Me St. Lewis et
20 l'Université, parce que ça ne respecte pas la loi
21 contre la champartie.

22 Vous devrez le signifier à
23 l'Université à ce moment-là, parce que
24 l'Université... Est-ce que Me Doody accepte
25 d'accepter la signification de la part de
26 l'Université?

1 INTERPRETER 1: Indeed, Mr.
2 Rancourt, you must serve the Notice to cancel the
3 agreement on Mr. St. Lewis (sic) and the
4 University.

5 Can the University be served...
6 Can the service be made on Mr. Doody?

7 MR. DOODY: If it assist matters,
8 Your Honour, I can indicate that I admit service on
9 behalf of the University.

10 JUSTICE BEAUDOIN: Do you have a
11 copy?

12 MR. DOODY: I have a copy

13 JUGE BEAUDOIN: O.K. Donc la
14 signification, je vais indiquer que pour les fins
15 du dossier, que le dossier de motion,---

16 INTERPRETER 1: So I will indicate
17 for the purposes of the record that the motion
18 record,---

19 JUGE BEAUDOIN: ---qui traite de
20 la question de la champartie,---

21 INTERPRETER: ---dealing with the
22 champarty issue...

23 JUSTICE BEAUDOIN: ---has been
24 served on the University.

25 INTERPRETER 1: Euh...

26 JUGE BEAUDOIN: A été signifiée. A

1 été signifiée sur l'Université.

2 MR. DOODY: I can also indicate, if
3 it assists, Your Honour, for the record, that any
4 further documents Mr. Rancourt wishes to serve, if
5 served on me, I will admit that they are served on
6 behalf of the University.

7 JUGE BEAUDOIN: Monsieur...
8 Maître...

9 MR. DEARDEN: Your Honour?

10 JUSTICE BEAUDOIN: Yes.

11 MR. DEARDEN: I can hardly hear
12 anybody now.

13 JUSTICE BEAUDOIN: Well, the
14 problem is we're in a... We can try to put Mr.
15 Doody a little closer, I suppose. He has a soft
16 voice. He was just saying, for the record, that he
17 would accept service on any future documents for
18 the University.

19 Donc c'est clair que Me Doody, de
20 la part de l'Université, acceptera la
21 signification, accepte que soient signifiés... Les
22 documents peuvent être signifiés directement.

23 INTERPRETER 1: So Mr. Doody has
24 accepted that the documents for the University can
25 be served directly on him.

26 JUGE BEAUDOIN: Oui.

1 INTERPRETER 1: Your Honour, could
2 I make a suggestion?

3 JUSTICE BEAUDOIN: Yes.

4 INTERPRETER 1: If I could speak
5 into an earpiece, I could repeat everything I have
6 said in English and translate simultaneously. I
7 wonder if that is...

8 JUSTICE BEAUDOIN: We have some...
9 It's the person at the other end of the phone.

10 INTERPRETER 1: Yeah. No, and he
11 would hear... I'm just wondering whether...

12 MR. DEARDEN: I don't have an
13 earpiece.

14 INTERPRETER 1: Yeah. I'm just
15 wondering if I could whisper into the phone system
16 simultaneously, whether that would... I don't
17 know.

18 JUSTICE BEAUDOIN: But we also have
19 Mr...

20 INTERPRETER 1: Okay, I'm sorry.

21 JUSTICE BEAUDOIN: You know? The
22 problem is Mr. Doody doesn't...

23 INTERPRETER: Sorry. I didn't mean
24 to complicate things, Your Honour.

25 JUSTICE BEAUDOIN: Yeah.

26 MS J. ST. LEWIS: Those are the

1 [inaudible] limited utility. I've used them
2 before, and I think what we are going to have to do
3 is have people stand almost directly on a... Like
4 a standing microphone, and go directly there in
5 order for Rick to hear with a fair amount of
6 clarity, and people will have to speak up at a much
7 higher volume.

8 THE REGISTRAR: I can move it
9 around a bit, you know, and you know, depending on
10 who is speaking, I can drag it towards them.

11 MS J. ST. LEWIS: But I have used
12 them before. I'm saying that's not going to be
13 good enough. You will be too frustrated.

14 I mean, I think people really have
15 to try to be much closer, at a much higher volume.

16 THE REGISTRAR: And speak loudly.

17 MS J. ST. LEWIS: Definitely.

18 JUSTICE BEAUDOIN: Okay. We will
19 ask everybody who is speaking, as much as possible,
20 to come and stand... Can we move that a bit
21 further down?

22 UNIDENTIFIED SPEAKER: Put it that
23 way, Your Honour? Yes.

24 JUSTICE BEAUDOIN: Move it a bit
25 further down? Okay?

26 M. D. RANCOURT: Si je comprends

1 bien, Monsieur le juge, ce n'est pas pertinent pour
2 moi parce que de toute façon, moi je parle en
3 français.

4 JUGE BEAUDOIN: H'm.

5 INTERPRETER 1: This wouldn't apply
6 to me, Your Honour?

7 JUGE BEAUDOIN: Mais c'est la
8 traduction pour M. Doody.

9 M. D. RANCOURT: Oui.

10 JUGE BEAUDOIN: Et pour Me Dearden.

11 INTERPRETER 1: This wouldn't apply
12 to me, because I'm speaking in French, but it's the
13 translation for Mr. Doody and Mr. Dearden.

14 JUGE BEAUDOIN: On va traiter tout
15 d'abord... L'autre question qui a lieu, c'est est-
16 ce que les interrogatoires au préalable peuvent se
17 poursuivre dans la présente, dans la motion qui
18 traite du sujet de champartie.

19 INTERPRETER 1: The other question
20 we have to deal with is whether the discoveries can
21 move forward while we are dealing with this motion
22 regarding champarty.

23 JUGE BEAUDOIN: En effet, Monsieur
24 Rancourt...

25 MR. DEARDEN: I do have submissions
26 on that, Your Honour, when you feel appropriate.

1 JUGE BEAUDOIN: O.K. Non, mais
2 effectivement, Monsieur Rancourt, les deux choses
3 vont en parallèle parce qu'effectivement, la
4 question de champartie touche uniquement l'accord
5 entre Me St. Lewis et l'Université, donc ça
6 n'affecte pas le bien-fondé de sa poursuite de
7 libelle diffamatoire contre vous.

8 M. D. RANCOURT: Je suis...

9 INTERPRETER 1: Mr. Rancourt, these
10 two matters are parallel, the first issue regarding
11 champarty has to do only with the agreement between
12 Mr. St. Lewis (sic) and the University.

13 JUSTICE BEAUDOIN: Ms St. Lewis.

14 INTERPRETER 1: Ms St. Lewis, I
15 apologize,---

16 JUSTICE BEAUDOIN: Yeah.

17 INTERPRETER 1: ---and the
18 University, whereas the second issue dealing with
19 the libel runs parallel to that.

20 JUGE BEAUDOIN: Donc si Me St.
21 Lewis accepte, mettons, qu'on va faire un
22 échéancier pour les interrogatoires au préalable,
23 elle...

24 Si elle accepte le risque qu'on va
25 faire des interrogatoires et qu'effectivement, le
26 Tribunal tranche la question de champartie et dit:

1 « Bon... », et annule l'entente entre elle et
2 l'Université au sujet des prêts, et si elle est
3 prête toutefois de procéder avec les
4 interrogatoires et accepte ce risque, ce n'est pas
5 une raison pour retarder les interrogatoires.

6 INTERPRETER 1: So if Ms St. Lewis
7 agrees... I would set a schedule for discoveries
8 and if she accepts, then if the champarty issue is
9 dealt with and the agreement regarding costs is
10 cancelled, if she accepts that risk...

11 M. D. RANCOURT: Monsieur le juge,
12 je comprends, je pense comprendre parfaitement ce
13 que vous dites.

14 Je suis d'accord que les deux
15 évidences, les deux corps d'évidence sont
16 indépendants, mais je suis prêt à faire une
17 présentation et j'ai amené des autorités, et j'ai
18 une présentation très claire et pour aider à
19 suivre, j'ai amené des copies aussi pour montrer
20 que les autorités montrent bien que c'est un
21 gaspillage significatif des ressources, du temps,
22 et des parties en question, et de la Cour.

23 JUGE BEAUDOIN: Mais ça ne touche
24 pas la question, O.K.?

25 M. D. RANCOURT: Ce que je veux
26 dire, c'est...

1 JUGE BEAUDOIN: O.K., attends.

2 INTERPRETER 1: Your Honour, I
3 believe I understand exactly what you are saying,
4 that these are two aspects of the evidence that are
5 independent from each other and I'm willing to
6 proceed.

7 However, I have brought copies of
8 different jurisprudence, and I believe that they
9 show that this would be a waste of both time and
10 resources of the individuals and of the Court.

11 JUSTICE BEAUDOIN: Okay. There is
12 somebody new that has come in the room. Who are
13 you?

14 INTERPRETER 1: I'm the
15 interpreter, Your Honour. I'm sorry I was late.

16 JUSTICE BEAUDOIN: Okay. All
17 right. Thank you, Elizabeth.

18 INTERPRETER 1: Thank you, Your
19 Honour.

20 M. D. RANCOURT: Je vais attendre
21 que monsieur l'interprète s'installe.

22 CHANGE OF INTERPRETER

23 Alors, est-ce que je peux
24 commencer?

25 INTERPRETER 2: H'm.

26 M. D. RANCOURT: Alors Monsieur le

1 juge, ce que je veux dire c'est que si la motion
2 pour « champarty » a un succès, la...

3 INTERPRETER: All I can say, if the
4 motion is successful...

5 M. D. RANCOURT: L'action entière
6 est annulée.

7 JUGE BEAUDOIN: Non.

8 INTERPRETER 2: The entire
9 proceedings...

10 M. D. RANCOURT: Peut être annulée.

11 C'est-à-dire qu'il y a une bonne chance que
12 l'action entière soit annulée, étant donné la
13 jurisprudence.

14 JUGE BEAUDOIN: Non, non. Citez-
15 moi une cause ou l'action a été annulée.

16 INTERPRETER 2: Oh!

17 JUGE BEAUDOIN: Oui.

18 INTERPRETER 2: So if the motion is
19 successful, there is a good possibility that the
20 proceeding will be cancelled.

21 MR. DEARDEN: Sorry, could that be
22 repeated, please?

23 INTERPRETER 2: If the motion is
24 successful, there is a good chance that the entire
25 case will be cancelled.

26 JUGE BEAUDOIN: Montre-moi une

1 décision...

2 MR. DEARDEN: This is what Mr.
3 Rancourt is saying?

4 JUSTICE BEAUDOIN: Yeah. Yes.

5 INTERPRETER 2: Yes.

6 M. D. RANCOURT: Oui. Alors
7 Monsieur le juge, j'ai préparé... En préparant la
8 motion et l'affidavit qui soutient la motion...

9 INTERPRETER 2: So in preparing my
10 motion and the affidavit supporting it...

11 M. D. RANCOURT: Non, ce n'est pas
12 ce document-là, Monsieur le juge. J'ai amené une
13 copie additionnelle ici.

14 INTERPRETER 2: Not that document.
15 I have an additional copy with me.

16 M. D. RANCOURT: Donc la notice de
17 la motion est très courte.

18 INTERPRETER 2: The Notice of
19 Motion is very short.

20 M. D. RANCOURT: Et est ici.
21 Voilà!

22 JUGE BEAUDOIN: Je pense que j'en
23 ai une.

24 M. D. RANCOURT: Pardon?
25 Probablement. Je ne vois pas si loin que ça, mais
26 probablement. Donc ça, c'est la notice de la

1 motion.

2 INTERPRETER 2: That's the motion,
3 the Notice of Motion.

4 M. D. RANCOURT: Et dans cette
5 notice,---

6 INTERPRETER 2: And in that
7 Notice...

8 M. D. RANCOURT: ---je ne cite...
9 C'est-à-dire qu'il faut comprendre que je n'ai pas
10 encore soumis le factum pour cette motion, mais...
11 Mais...

12 INTERPRETER 2: It's understood
13 that I have not yet submitted the factum for this
14 motion.

15 M. D. RANCOURT: Mais en faisant la
16 recherche, j'ai identifié plusieurs... De mémoire,
17 je ne m'en souviens pas lesquels. Je ne peux pas
18 le nommer, mais j'ai...

19 INTERPRETER 2: I cannot name them,
20 but from memory, I identified several in my
21 research.

22 M. D. RANCOURT: J'ai identifié
23 plusieurs causes que je pourrais donner à la Cour
24 avec un peu de temps.

25 INTERPRETER 2: I did find several
26 cases that I can give to the Court, if I'm given

1 some time.

2 MR. DOODY: I'm sorry. I'm not
3 sure what document Mr. Rancourt is referring to,
4 what Notice of Motion.

5 JUSTICE BEAUDOIN: There's a Notice
6 of Motion, the one I say that you...

7 MR. DOODY: Can I have a copy,
8 please?

9 JUGE BEAUDOIN: Le dossier de
10 motion, vous l'avez vu?

11 M. D. RANCOURT: Ça, c'est la...

12 MR. DOODY: Of the champarty
13 motion? Okay.

14 M. D. RANCOURT: Oui. Donc j'ai
15 donné une copie. O.K. Il me redonne cette copie.
16 Alors...

17 JUGE BEAUDOIN: Mais je note à la
18 page 3 de cette motion---

19 M. D. RANCOURT: H'm.

20 JUGE BEAUDOIN: ---que vous citez
21 la cause Beaudet---

22 M. D. RANCOURT: Oui.

23 JUGE BEAUDOIN: ---contre Locator
24 (ph).

25 INTERPRETER 2: On page 3 of that
26 motion, the Beaudet case.

1 JUGE BEAUDOIN: Cette cause-là ne
2 cite pas... C'est pour...

3 M. D. RANCOURT: Je suis d'accord,
4 Monsieur le juge.

5 JUGE BEAUDOIN: Ce n'est pas pour
6 la proposition que la poursuite est nulle.

7 M. D. RANCOURT: Non.

8 INTERPRETER 2: This is not the
9 reason why the pursuit (sic) would be not valid.

10 M. D. RANCOURT: Cette cause a été
11 citée uniquement parce que c'est la meilleure
12 définition, plus simple, de « champarty
13 maintenance » que j'ai trouvée.

14 INTERPRETER 2: This is...

15 M. D. RANCOURT: Et cette cause
16 n'est citée que pour cette raison.

17 INTERPRETER 2: This case is
18 mentioned only because it's the best definition I
19 found for maintenance.

20 MS J. ST. LEWIS: Champarty and
21 maintenance.

22 INTERPRETER 2: Oh!

23 MS J. ST. LEWIS: For the terms
24 "champarty" and "maintenance".

25 INTERPRETER 2: "Champarty" and
26 "maintenance".

1 M. D. RANCOURT: Mais je dis...

2 JUGE BEAUDOIN: En français, c'est

3 « champartie ».

4 INTERPRETER 2: « Champartie ».

5 MS J. ST. LEWIS: Yeah.

6 JUGE BEAUDOIN: Ça devrait être du

7 vieux français.

8 INTERPRETER 2: Thank you, Your

9 Honour.

10 M. D. RANCOURT: Alors vous voyez,

11 le paragraphe 6, je dis...

12 INTERPRETER 2: I'm saying at

13 paragraph 6.

14 M. D. RANCOURT: Je l'ai écrit en

15 anglais.

16 INTERPRETER 2: And I wrote it in

17 English.

18 M. D. RANCOURT: [Lecture]:

19 « That an action should be

20 stayed or dismissed as an

21 abuse of process because it

22 is based on a champarteous

23 agreement is established at

24 law. When maintenance and

25 champarty are demonstrated,

26 the courts have ruled the

1 remedy to be to stay or
2 dismiss the action, including
3 the Court of Appeal of
4 Ontario. » -- Tel que lu

5 M. D. RANCOURT: Donc j'avais une
6 autorité du « Court of Appeal of Ontario », et
7 quelques autres.

8 INTERPRETER 2: So I have the
9 authority from the Court of Appeal and some others.

10 M. D. RANCOURT: Que j'ai...

11 JUGE BEAUDOIN: Mais effectivement,
12 il faut entendre. Me St. Lewis fait une poursuite
13 contre vous de libelle diffamatoire.

14 INTERPRETER 2: So Mr...

15 JUGE BEAUDOIN: Le bien-fondé de
16 cette poursuite...

17 INTERPRETER 2: Mr. St. Lewis (sic)
18 has a cause against you, which is well founded,
19 for...

20 JUGE BEAUDOIN: Ce n'est pas ça, ce
21 n'est pas la traduction. Le mérite de cette
22 poursuite n'est pas tranché par la question de
23 champartie.

24 INTERPRETER 2: The merit of the...
25 So...

26 JUGE BEAUDOIN: Ça touche

1 uniquement la question est-ce qu'elle a le droit
2 d'avoir l'Université payer ses frais.

3 INTERPRETER 2: The merit of that
4 suit is not determined by that---

5 JUSTICE BEAUDOIN: Champarty
6 motion.

7 INTERPRETER 2: ---champarty
8 motion. The question here is whether the
9 University should pay for the fees.

10 M. D. RANCOURT: Je suis
11 parfaitement d'accord que les deux choses sont
12 indépendantes.

13 INTERPRETER 2: I agree that those
14 two things are independent.

15 M. D. RANCOURT: C'est pour cette
16 raison précise que puisqu'une motion de champartie
17 peut avoir un succès, dans la mesure où elle est
18 démontrée,---

19 INTERPRETER 2: And it's because of
20 action for champarty,---

21 M. D. RANCOURT: ---pour éliminer
22 l'action en entier,---

23 INTERPRETER 2: ---if successful,
24 to eliminate the cost completely.

25 JUGE BEAUDOIN: Mais vous n'avez
26 pas identifié dans vos matériaux une telle

1 décision.

2 M. D. RANCOURT: Mais, Monsieur le
3 juge, je n'ai pas eu l'occasion de faire mon
4 factum, mais je crois...

5 INTERPRETER 2: Your Honour, I
6 didn't make my factum yet.

7 M. D. RANCOURT: Je crois que j'ai
8 peut-être ici des copies des autorités en question
9 là.

10 JUGE BEAUDOIN: Maître Rancourt...
11 Monsieur Rancourt...

12 INTERPRETER 2: But I think I have
13 copies of...

14 JUGE BEAUDOIN: Monsieur Rancourt,
15 je vais vous dire tout simplement qu'à ma
16 connaissance, c'est complètement indépendant. Il
17 n'y a aucune raison pour retarder les
18 interrogatoires vis-à-vis votre motion de
19 champartie.

20 Donc on va faire un échéancier
21 pour les interrogatoires, on va faire un échéancier
22 pour le champartie.

23 Le champartie, je veux que ce soit
24 entendu avant le procès.

25 M. D. RANCOURT: Monsieur le
26 juge...

1 INTERPRETER 2: Excusez-moi.

2 Excusez-moi. So in my view, those two things are
3 independent. You should have two different
4 schedules, one for the hearings and one for the
5 champarty motion, because those are separate.

6 M. D. RANCOURT: Alors Monsieur le
7 juge, mon but n'est pas du tout de retarder les
8 « examinations ».

9 INTERPRETER 2: But Your Honour, my
10 objective is not to delay the questioning.

11 M. D. RANCOURT: Mon point est que
12 je crois, et c'est mon estimation, que la motion
13 champartie a un bon succès d'éliminer l'action.

14 JUGE BEAUDOIN: Mais si vous
15 avez...

16 INTERPRETER 2: But I estimate that
17 the champarty motion has a good chance of success,
18 to eliminate the motion.

19 M. D. RANCOURT: Quand il y a une
20 telle chance et que c'est établi dans les autorités
21 que c'est possible, et je demanderais de me donner
22 quelques instants pour trouver les autorités.

23 INTERPRETER 2: If possible, I'd
24 like...

25 JUGE BEAUDOIN: Non. Je peux vous
26 dire que ça ne vaut pas la peine, franchement. La

1 question de l'entente, ça va être tranché avant le
2 procès.

3 Si Me St. Lewis est prête à
4 encourir les risques des interrogatoires, si vous
5 réussissez avec votre motion, vous aurez vos frais.

6 INTERPRETER 2: If Mr. St. Lewis
7 (sic) is ready to incur the cost of the---

8 JUSTICE BEAUDOIN: Discovery.

9 INTERPRETER 2: ---questioning,
10 then it's up to you to decide.

11 M. D. RANCOURT: Le problème,
12 Monsieur le juge, c'est que moi aussi je vais être
13 soumis à une demande sur mes ressources suite à ces
14 interrogatoires.

15 INTERPRETER 2: The question is
16 that I will also be subject to pressure on my
17 resources following those questioning.

18 M. D. RANCOURT: Et justement, la
19 motion pour champartie est en partie là parce qu'il
20 y a une grande asymétrie de ressources entre
21 l'Université et moi-même.

22 INTERPRETER 2: And the champarty
23 motion is there because there is a big difference
24 in the resources of the University and my own.

25 M. D. RANCOURT: En particulier, je
26 suis sans emploi en ce moment.

1 INTERPRETER 2: Namely, I'm now...

2 I don't have a job now.

3 M. D. RANCOURT: Vous êtes peut-
4 être au courant, Monsieur le juge, du background de
5 ce cas, mais...

6 INTERPRETER 2: You may be aware of
7 the background of this case.

8 M. D. RANCOURT: Mais j'étais
9 professeur à l'Université d'Ottawa.

10 INTERPRETER 2: I was a teacher at
11 the University of Ottawa.

12 M. D. RANCOURT: Et j'ai été
13 congédié en 2009.

14 INTERPRETER 2: And I was fired in
15 2009.

16 M. D. RANCOURT: Cette cause est
17 devant les tribunaux pour le travail, en ce moment.

18 INTERPRETER 2: And this case is
19 now in the courts.

20 M. D. RANCOURT: Et c'est mon
21 opinion que cette action fait partie des
22 représailles contre moi pour mes critiques sur mon
23 blog qui s'appelle: « U of O watch ».

24 INTERPRETER 2: And it's my opinion
25 that this motion is a form of reprimand of myself
26 because of my blog, « U of O watch ».

1 M. D. RANCOURT: Et cette asymétrie
2 de ressources est significative et met beaucoup de
3 pression financière sur moi, en ce moment.

4 INTERPRETER 2: And the asymmetry
5 of resources is important, and it's putting a lot
6 of pressure on myself.

7 M. D. RANCOURT: Et les cas que
8 j'ai vus, tous les cas que j'ai vus où la
9 « maintenance » et champartie ont été démontrés,---

10 INTERPRETER 2: And those cases
11 I've seen, where the champarty and maintenance were
12 shown,---

13 M. D. RANCOURT: ---quand ça a été
14 démontré, la réparation impliquait d'arrêter
15 l'action.

16 INTERPRETER 2: ---and in those
17 cases where they were shown, the end result was the
18 action was stopped.

19 JUGE BEAUDOIN: Mais vous n'avez
20 pas cité... Vous n'avez pas cité de causes là,
21 mais celle que vous avez citée ne tient pas pour
22 cette proposition du tout, du tout.

23 M. D. RANCOURT: J'admets.
24 J'admets cela, Monsieur le juge.

25 MS ST. LEWIS: I believe that he
26 needs to hear that.

1 INTERPRETER 2: Sorry.

2 MS ST. LEWIS: He said the cases
3 that you cited do not stand for that proposition.

4 JUSTICE BEAUDOIN: There are no
5 such cases. The case that he has doesn't stand for
6 that proposition, and he said he acknowledges
7 that.

8 M. D. RANCOURT: Donnez-moi
9 quelques instants. Monsieur le juge, je m'engage
10 devant la Cour à produire ces cas aujourd'hui.

11 JUGE BEAUDOIN: Mais effectivement,
12 c'est trop tard.

13 INTERPRETER 2: I undertake to
14 produce the cases today.

15 M. D. RANCOURT: Aujourd'hui.

16 JUGE BEAUDOIN: C'est trop tard.
17 C'est la conférence de l'échéancier, d'établir un
18 échéancier.

19 INTERPRETER 2: But we are today in
20 a conference to establish a schedule.

21 JUGE BEAUDOIN: Vous avez donné un
22 avis de motion et vous ne citez aucune cause qui...

23 INTERPRETER 2: You have a Notice
24 of Motion and you are not quoting any case.

25 JUGE BEAUDOIN: Qui soutient votre
26 proposition.

1 M. D. RANCOURT: Alors...

2 INTERPRETER 2: That is supporting
3 your proposal.

4 M. D. RANCOURT: Monsieur le juge,
5 si je peux demander votre indulgence pour prendre
6 quelques instants pour vérifier les documents, qui
7 sont les arguments que j'avais préparés?

8 En fait, j'aimerais mettre ça
9 devant...

10 INTERPRETER 2: If I could take a
11 few minutes to look at my documents?

12 M. D. RANCOURT: Je pense que
13 j'avais cité des... J'ai préparé ici un document
14 qui montre bien pourquoi on doit attendre avec les
15 « examinations ».

16 INTERPRETER 2: I prepared a
17 document that shows well the reason we should wait
18 until we proceed with the examinations.

19 JUGE BEAUDOIN: Avez-vous montré
20 ces documents-là aux autres parties?

21 M. D. RANCOURT: En ce moment, oui.

22 JUGE BEAUDOIN: Ça traite de la
23 question de champartie?

24 M. D. RANCOURT: Oui, c'est mon
25 argument.

26 INTERPRETER 2: Is it regarding the

1 question of champarty?

2 M. D. RANCOURT: C'est-à-dire que
3 le titre de ce document que j'ai préparé en
4 anglais, c'est:

5 « Defendant's arguments
6 regarding discovery. » -- Tel
7 que lu

8 INTERPRETER 2: That's the title of
9 the document that I prepared in English.

10 M. D. RANCOURT: Et j'ai cité
11 toutes les autorités ici.

12 INTERPRETER 2: And I quoted all
13 the authorities.

14 M. D. RANCOURT: Et toutes mes
15 raisons, de façon très logique.

16 INTERPRETER 2: And all my reasons,
17 in a very logical manner.

18 M. D. RANCOURT: Pour lesquelles on
19 devrait remettre à plus tard, à après que la motion
20 sur champartie soit entendue.

21 JUGE BEAUDOIN: O.K. Non, ça c'est
22 refusé.

23 INTERPRETER 2: For which you
24 should delay it until the motion on champarty is
25 heard.

26 JUGE BEAUDOIN: Ça, c'est clair.

1 Il faut comprendre, je vous refuse.

2 M. D. RANCOURT: D'accord.

3 JUGE BEAUDOIN: C'est clair. Je
4 refuse votre demande de remettre à après la motion
5 de champartie.

6 INTERPRETER 2: I'm going to be
7 very clear. I'm...

8 JUGE BEAUDOIN: C'est indépendant.
9 Si vous avez lieu, si vous avez gain de cause avec
10 votre motion de champartie, vous aurez gain de
11 cause à ce moment-là.

12 Si vous réussissez à annuler la
13 poursuite, vous demandez tous les frais parce
14 qu'effectivement, si vous avez gain de cause comme
15 vous le croyez pour annuler complètement la
16 poursuite, le résultat c'est que vous aurez tous
17 vos frais, et ça comprend les frais des
18 interrogatoires.

19 INTERPRETER 2: I want to be clear.
20 I'm not accepting your proposal to delay the
21 hearings.

22 If ever you are successful with
23 the champarty, then you will win your case.

24 And the interpreter apologizes.
25 This is just a summary of what His Honour
26 explained.

1 MR. DEARDEN: Okay. Can the
2 interpreter also tell me who just made that
3 statement?

4 JUSTICE BEAUDOIN: I said, Mr.
5 Dearden, that I realize that he thinks the
6 champarty motion... He believes... Mr. Rancourt
7 believes he has authority that says the entire
8 action will be struck on the basis of champarty.

9 I'm not aware of any such
10 authorities. My understanding... I know that the
11 case law...

12 MR. DEARDEN: Sorry, Justice
13 Beaudoin. The only one that I'm able to hear is
14 the interpreter.

15 JUSTICE BEAUDOIN: Because he is in
16 front of the machine.

17 MR. DEARDEN: So interpreter, can
18 you just repeat to me really loud, please, what
19 Judge Beaudoin said?

20 JUSTICE BEAUDOIN: Can you hear me
21 now? Can you hear me now?

22 MR. DEARDEN: I can hear you,
23 Justice Beaudoin.

24 JUSTICE BEAUDOIN: You know, I
25 think it may be better if I do the interpreting.

26 MS J. ST. LEWIS: Yeah. Yeah.

1 MR. DEARDEN: Now I can...

2 JUSTICE BEAUDOIN: Would you
3 accept that?

4 M. D. RANCOURT: Oui.

5 MS J. ST. LEWIS: Yes.

6 JUGE BEAUDOIN: O.K. Je pense que
7 j'aurais... Je pense que ce serait mieux que ce
8 soit moi qui fasse la traduction.

9 INTERPRETER 2: Okay.

10 JUGE BEAUDOIN: O.K.?

11 INTERPRETER 2: Thank you, Your
12 Honour.

13 JUSTICE BEAUDOIN: Okay. I'm going
14 to do the interpreting. I think it's simply a lot
15 easier. I'll just try to do it in French, and then
16 in English.

17 MS J. ST. LEWIS: H'm.

18 JUSTICE BEAUDOIN: I indicated to
19 Mr. Rancourt that I understand he believes that the
20 champarty motion will result in a striking of the
21 action.

22 I indicated to him my belief that
23 the champarty motion might nullify the agreement or
24 strike the agreement between the University and Ms
25 Lewis, but it wouldn't touch the merits of her
26 action. That's my understanding of the case law.

1 He says he has case law to the
2 contrary. He hasn't put that case law before me,
3 but I have indicated that I'm not prepared to delay
4 the discoveries on the purposes of the champarty
5 motion and if he has a remedy...

6 He has indicated there is, as he
7 would say, an economic imbalance between himself
8 and the University.

9 He believes that the University or
10 that this defamation is a part of his larger
11 employment dispute and his blog, and so he is
12 talking about the inequity of resources and while
13 I'm sympathetic to that, his remedy at the end of
14 the day is to get costs if he is successful in his
15 motion to stop the action on the basis of
16 champarty.

17 He will get those costs, and he
18 can say: "I tried to have the discoveries stopped
19 and the Court wouldn't allow it, so I was forced to
20 go to discovery."

21 Somebody else has joined. And you
22 are?

23 MS H. GASHOKA: I am Hazel.

24 JUSTICE BEAUDOIN: Please? I'm
25 sorry?

26 MS H. GASHOKA: Hazel.

1 JUSTICE BEAUDOIN: Hazel?

2 MS H. GASHOKA: Yeah.

3 JUSTICE BEAUDOIN: And do you have

4 a surname?

5 MS H. GASHOKA: Yes, Gashoka.

6 COURT REPORTER: What's that?

7 MS H. GASHOKA: Gashoka.

8 JUSTICE BEAUDOIN: Could you spell

9 that, please?

10 MS H. GASHOKA: G-a.

11 JUSTICE BEAUDOIN: G-a.

12 MS H. GASHOKA: "S", as in Sam.

13 JUSTICE BEAUDOIN: H'm.

14 MS H. GASHOKA: H-o-k, as in kilo,

15 A.

16 JUSTICE BEAUDOIN: "A"?

17 MS H. GASHOKA: "A", as in apple.

18 JUSTICE BEAUDOIN: "A". Gashoka.

19 Thank you, Ms Gashoka.

20 JUGE BEAUDOIN: Donc effectivement,

21 la motion par champartie va procéder. Donc vous

22 avez signifié la motion.

23 Est-ce que l'Université, Mme St.

24 Lewis, a répondu?

25 So you have served your material.

26 It's the champarty motion. The University has

1 accepted.

2 I've indicated under Rule
3 37.07(1), the University has to be served. Mr.
4 Doody has accepted service on behalf of the
5 University.

6 They therefore have a right to
7 appear on the motion and make submissions by virtue
8 of that.

9 M. D. RANCOURT: H'm.

10 JUSTICE BEAUDOIN: Has the
11 responding material been prepared by Ms Lewis?

12 Est-ce que... Par rapport à Me
13 Lewis, est-ce qu'elle a déposé des documents en
14 réponse?

15 So Mr. Dearden, when do you have
16 responding material for the champarty motion?

17 MR. DEARDEN: You have our schedule
18 handy?

19 JUSTICE BEAUDOIN: I have something
20 here. I do.

21 MR. DEARDEN: And just so that I
22 understand, I apologize. I didn't hear hardly
23 anything that went on when you were dealing with
24 the University standing. They now have
25 intervention status?

26 JUSTICE BEAUDOIN: Well, it's

1 automatic. It's automatic by virtue of the Rule.

2 Rule 37.07(1) requires any motion
3 to be served on a party that is affected by the
4 Order, so I believe the leave issue is irrelevant,
5 and it's implicit in the rule.

6 MR. DEARDEN: So we are proposing
7 as item number 4 on our proposed time-table for
8 champarty motion, the revised submission, that
9 Professor St. Lewis will file her evidence opposing
10 the motion on February 21st and the University of
11 Ottawa will do likewise on February 21st.

12 JUGE BEAUDOIN: C'est d'accord?

13 M. D. RANCOURT: Non. Monsieur le
14 juge, moi je propose que... Parce que la date...
15 C'est-à-dire que M. Dearden vient d'expliquer que
16 c'est l'item numéro 4 sur ce qu'il propose, et je
17 pense que ça devrait être le prochain item, c'est-
18 à-dire l'item numéro 1. On peut parler de la date,
19 mais le point est...

20 JUGE BEAUDOIN: Mais ce n'est pas
21 nécessaire. Numéro 1, 2, 3, ce n'est pas
22 nécessaire.

23 M. D. RANCOURT: Ah, excusez-moi.
24 Ah oui, c'est parce qu'ils ont été éliminés.

25 JUGE BEAUDOIN: Oui. 1, 2, 3, ça a
26 été éliminé.

1 M. D. RANCOURT: Et donc, je...

2 JUSTICE BEAUDOIN: Okay. So Mr.

3 Rancourt said we should go with number 1. I just

4 said that 1, 2, 3 are not necessary.

5 M. D. RANCOURT: Excusez-moi.

6 Alors j'ai trop préparé, je pense.

7 JUGE BEAUDOIN: O.K.

8 M. D. RANCOURT: Donc si je

9 comprends bien, ce serait...

10 JUGE BEAUDOIN: Ce que Me Dearden

11 et Me Doody proposent est qu'ils vous signifient

12 leurs documents en réponse le 21 février.

13 M. D. RANCOURT: O.K. Ils

14 proposent le 21 février?

15 JUGE BEAUDOIN: H'm.

16 M. D. RANCOURT: Et ça serait la

17 prochaine chose dans cette motion?

18 JUGE BEAUDOIN: O.K. Bon.

19 Ensuite, est-ce que vous avez soumis un affidavit à

20 l'appui de votre motion, Monsieur Rancourt?

21 M. D. RANCOURT: La motion de

22 champartie?

23 JUGE BEAUDOIN: Oui.

24 M. D. RANCOURT: Oui, j'ai soumis

25 un affidavit à la Cour.

26 JUGE BEAUDOIN: Et est-ce que

1 l'Université, Me St. Lewis, propose déposer des
2 affidavits également?

3 And does the University and Ms St.
4 Lewis propose to file responding affidavits?

5 MR. DOODY: Yes, Your Honour. For
6 the University, yes, and I believe...

7 JUSTICE BEAUDOIN: So that's part
8 of the material? Then we need a date for the
9 cross-examinations.

10 Ça nous prend une date pour les
11 interrogatoires sur les affidavits?

12 MR. DOODY: We propose the 24th of
13 February, Your Honour. One of the difficulties is
14 the deponent for the University of Ottawa will be
15 Mr. Allan Rock, who is the President of the
16 University, and in fact, Mr. Rancourt had asked or
17 indicated he was going to serve a summons to
18 witness on Mr. Rock.

19 Rather than go through that, we
20 are prepared to serve an affidavit from Mr. Rock
21 and propose he be cross-examined on the 24th of
22 February, which is one of the...

23 In fact, I was told it was the
24 only date this month he could do that, in the
25 afternoon. Mr. Dearden is agreeable to that, and I
26 don't know Mr. Rancourt's position.

1 M. D. RANCOURT: Est-ce que je peux
2 faire suite à ça?

3 JUGE BEAUDOIN: Oui.

4 M. D. RANCOURT: Monsieur le juge,
5 à ce moment-ci je vais vous demander, si possible,
6 d'être un petit peu patient avec moi, parce que
7 j'ai quelques points à amener.

8 Premièrement, il y a une
9 possibilité d'un « examination » de témoin avant
10 les « cross-examination ».

11 MR. DEARDEN: Hello?

12 JUSTICE BEAUDOIN: Wait a minute.
13 Mr. Rancourt is saying he wants or that there is a
14 possibility of a Notice of Examination before the
15 cross-examination.

16 M. D. RANCOURT: H'm. Et puis,
17 mais surtout de façon très importante, Monsieur le
18 juge, j'ai fait service d'une motion que j'appelle
19 « open-court motion », qui a été servie.

20 JUGE BEAUDOIN: Oui. Ça, je ne le
21 comprends pas.

22 M. D. RANCOURT: Oui. Alors c'est
23 parce que j'ai essayé de déposer cette motion
24 devant la Cour, mais on m'a informé que je ne
25 pouvais pas déposer une motion devant la Cour tant
26 qu'il n'y a pas de date pour cette motion et que

1 c'est dans le contexte du « case management » qu'on
2 assigne ces dates.

3 Et donc, je n'ai pas pu. C'est
4 pour ça que la Cour n'a pas ce document, mais j'ai
5 amené ce que j'ai.

6 JUGE BEAUDOIN: Oui, mais qu'est-ce
7 que ça traite?

8 M. D. RANCOURT: O.K. Donc cette
9 motion...

10 JUGE BEAUDOIN: Qu'est-ce que ça a
11 d'affaires aux interrogatoires?

12 M. D. RANCOURT: Donc cette motion,
13 j'aimerais vous donner une copie et vous dire
14 succinctement de quoi il s'agit.

15 C'est donc une motion, voici.
16 Évidemment, l'Université et l'autre partie ont été
17 servis, et voici la motion en question.

18 MR. DOODY: Sorry, what document
19 has just been handed out?

20 JUSTICE BEAUDOIN: It's called an
21 « open-court motion ».

22 MR. DOODY: We received a Notice of
23 Motion (open-court motion). Is that the document
24 that---

25 JUSTICE BEAUDOIN: Yeah.

26 MR. DOODY: ---Mr. Rancourt just

1 handed out?

2 M. D. RANCOURT: Oui.

3 MR. DOODY: Three or four pages?

4 Five or six pages?

5 M. D. RANCOURT: Oui.

6 MR. DOODY: Thank you.

7 M. D. RANCOURT: Et donc dans cette
8 motion que j'ai servie, je demande... Alors à la
9 page 2, vous voyez ce que je demande à la Cour. Je
10 demande un ordre:

11 « ...an Order that all out-
12 of-court examinations of
13 witnesses and deponents of
14 affidavits on motions in this
15 action be open to the public,
16 consistent with the open-
17 court principle. » -- Tel que
18 lu

19 JUGE BEAUDOIN: Mais ce n'est pas
20 un Tribunal. Ce n'est pas une séance de la Cour.

21 M. D. RANCOURT: Oui. Je crois que
22 oui. Je vais préparer un factum, et j'ai amené
23 toutes... J'ai étudié toutes les causes devant la
24 Cour supérieure de...

25 JUGE BEAUDOIN: Les
26 interrogatoires, c'est hors-cour.

1 M. D. RANCOURT: Monsieur le juge,
2 avec tout respect, je pense que cette motion doit
3 être entendue.

4 JUGE BEAUDOIN: Non.

5 M. D. RANCOURT: Donc...

6 JUGE BEAUDOIN: Non.

7 M. D. RANCOURT: Si je comprends
8 bien, vous allez de façon rapide ne pas accepter
9 que cette motion soit déposée?

10 JUGE BEAUDOIN: Bien, non.
11 Effectivement. Il n'y a pas de droit... Je veux
12 dire les interrogatoires, c'est entre les parties.
13 Ce n'est pas devant le Tribunal.

14 M. D. RANCOURT: C'est...

15 JUGE BEAUDOIN: C'est hors-cour.

16 M. D. RANCOURT: Je...

17 JUGE BEAUDOIN: Donc le principe
18 que le Tribunal soit ouvert au public ne s'applique
19 pas.

20 M. D. RANCOURT: Cette
21 argumentation, Monsieur le juge, je suis prêt à la
22 faire en détails avec les autorités, mais de façon
23 où j'ai le temps de soumettre un factum, de me
24 préparer de façon convenable.

25 JUGE BEAUDOIN: Non, non.

26 M. D. RANCOURT: Mais je ne

1 m'attendais pas...

2 JUGE BEAUDOIN: On parle des

3 interrogatoires hors du Tribunal.

4 M. D. RANCOURT: Ce sont des...

5 Oui, c'est hors du Tribunal, mais...

6 JUGE BEAUDOIN: Mais vous cherchez

7 quoi, au juste? Vous cherchez des interrogatoires

8 où?

9 M. D. RANCOURT: À la place

10 habituelle.

11 JUGE BEAUDOIN: Mais vous voulez

12 quoi, des gens qui sont là?

13 M. D. RANCOURT: Oui, absolument.

14 JUGE BEAUDOIN: Mais qui sont les

15 gens? Est-ce que c'est ces gens-là?

16 M. D. RANCOURT: C'est des gens du

17 public. Ça peut être les médias.

18 JUGE BEAUDOIN: Oui.

19 M. D. RANCOURT: Pour observer le

20 fonctionnement---

21 JUGE BEAUDOIN: Il y a...

22 M. D. RANCOURT: ---et le

23 processus de la Cour.

24 JUGE BEAUDOIN: Il y a une

25 transcription.

26 M. D. RANCOURT: Mais Monsieur le

1 juge, je ne pense pas que c'est approprié
2 d'argumenter cette motion maintenant, dans ces
3 conditions-ci.

4 JUGE BEAUDOIN: Je ne retarde pas
5 les interrogatoires pour ça parce que d'après moi,
6 c'est une motion qui n'a pas lieu.

7 JUSTICE BEAUDOIN: I'm now
8 refusing, Mr. Dearden, to deny or delay discoveries
9 on the basis of this open-court motion.

10 These are not discoveries,
11 examinations in a court. They are outside of
12 the... They are called « out-of-court
13 examinations ». They are between the parties.

14 And whoever else is present, other
15 than counsel and the reporter, they're there with
16 the permission of the parties.

17 If you want to have someone
18 present and Mr. Dearden and Mr. Doody don't object,
19 that is up to them, but there is no declaration of
20 an open-court principle that applies to
21 examinations for discovery.

22 I know there are prior rulings
23 that unnamed people can be there.

24 M. D. RANCOURT: Monsieur le juge,
25 dans l'étude que je fais...

26 MR. DEARDEN: Mr. Justice Beaudoin,

1 I'm not sure how we switched off to open-court
2 motion, but if I could just advise the Court that
3 Master McLeod has already ruled on this issue on
4 October the 6th, and Ms Semenova has a copy of his
5 ruling.

6 In paragraphs 19 through 21, Mr.
7 Rancourt objected to me asking Master McLeod to
8 make a specific direction that people like Mr.
9 Hickey, who choose to write about what happened in
10 the cross-examination, are not allowed to be there,
11 and he specifically ruled.

12 He rejected the open-court
13 principle argument and ruled that only the parties
14 or their parties could attend, and Mr. Rancourt did
15 not appeal that decision, and it is a decision
16 which Ms Semenova can hand out to you.

17 It's a decision that he did not
18 appeal and in my respectful submission, this open-
19 court principle, even if it was properly filed,
20 which it isn't, because there is no affidavit in
21 support, is of stock in this libel action.

22 M. D. RANCOURT: Alors Monsieur le
23 juge, pour préciser...

24 MR. DEARDEN: I think that is an
25 important decision for you to be aware of, Justice
26 Beaudoin.

1 M. D. RANCOURT: Bien sûr, et cette
2 décision fait partie de l'argumentation dans le
3 tout.

4 JUGE BEAUDOIN: Mais la question
5 est faite, et le temps d'appel est écoulé.

6 M. D. RANCOURT: Mais...

7 JUSTICE BEAUDOIN: The time for
8 appeal is gone.

9 M. D. RANCOURT: Monsieur le juge,
10 l'ordre du « Master » était pour une session de
11 « ré-examination » précise. L'ordre était pour
12 cette session-là.

13 JUGE BEAUDOIN: Je répète
14 l'ordonnance, dans ce cas-là.

15 M. D. RANCOURT: Je...

16 JUGE BEAUDOIN: Le principe de la
17 séance ouverte ne s'applique pas pour les
18 interrogatoires, les interrogatoires sur affidavit
19 ou les interrogatoires au préalable. C'est entre
20 les parties.

21 M. D. RANCOURT: Oui. Je comprends
22 ce que vous dites. Vous expliquez la position
23 actuelle, mais je pense que cette position est
24 contraire au principe de la cour ouverte---

25 JUGE BEAUDOIN: Non, non.

26 M. D. RANCOURT: ---de façon

1 importante.

2 JUGE BEAUDOIN: Je comprends, mais
3 je dis toutefois que les interrogatoires sur les
4 affidavits doivent se faire et je ne retarde pas
5 cette motion...les interrogatoires pour cette
6 motion-là.

7 M. D. RANCOURT: Euh...

8 JUGE BEAUDOIN: Donc il faut fixer
9 une date pour les interrogatoires.

10 M. D. RANCOURT: Monsieur le juge,
11 j'entends ce que vous dites. Je tiens à m'objecter
12 formellement.

13 JUGE BEAUDOIN: Oui.

14 M. D. RANCOURT: Et je demanderais
15 que vous expliquiez votre décision par rapport à
16 cette motion.

17 JUGE BEAUDOIN: Je répète les mêmes
18 motifs que le protonotaire McLeod.

19 M. D. RANCOURT: D'accord. Donc
20 vous allez l'expliquer, et je demanderais, si je
21 peux demander...

22 Je ne sais pas si je peux demander
23 ceci, mais comment est-ce que je peux faire appel à
24 cette décision, de ne pas recevoir cette motion?

25 JUGE BEAUDOIN: Ce n'est pas à moi
26 à vous donner des conseils.

1 M. D. RANCOURT: Merci.

2 JUGE BEAUDOIN: Effectivement...

3 Donc votre motion... Donc fixez-moi une date pour
4 les interrogatoires.

5 M. D. RANCOURT: Donc là, on est
6 rendu où?

7 JUGE BEAUDOIN: Là, l'Université,
8 Me Lewis, propose à répondre le 21 février. Ils
9 ont suggéré la date du 24 février pour les
10 interrogatoires.

11 M. D. RANCOURT: Pour...

12 JUSTICE BEAUDOIN: So the
13 University and Ms Lewis have said they would
14 respond by February 21st and they are proposing
15 February 24th for cross-examinations.

16 M. D. RANCOURT: C'est-à-dire
17 qu'ils ont parlé d'un seul témoin, M. Rock, mais
18 dans leur factum, ils avaient parlé de deux témoins
19 qui seraient examinés.

20 Ils avaient parlé d'un avocat pour
21 l'Université, qui est impliqué dans la cause du
22 travail, qui serait interrogé, alors j'aimerais
23 peut-être clarifier si ça va avoir lieu ça aussi
24 avant de...

25 JUSTICE BEAUDOIN: So you have two
26 affidavits?

1 MR. DOODY: And that will be a very
2 short... That will be a very short affidavit.

3 JUSTICE BEAUDOIN: You have two
4 affidavits?

5 MR. DOODY: Two affidavits, one
6 from Mr. Rock and one from a lawyer in the labour
7 arbitration, attaching a couple of documents to
8 indicate what the position is of the University.

9 JUSTICE BEAUDOIN: So we have
10 affidavits of Mr. Rock and a lawyer, who is?

11 MR. DOODY: I haven't identified
12 the person yet.

13 JUSTICE BEAUDOIN: This lawyer and
14 Ms Lewis. Any others? And then, Mr. Rancourt,
15 right?

16 M. D. RANCOURT: Et moi dans ma
17 motion, Monsieur le juge, j'avais demandé
18 d'examiner le chef du Bureau des gouverneurs de
19 l'Université d'Ottawa, qui est M. Giroux, et
20 j'avais demandé de faire cette « examination »-là,
21 qui doit être faite avant les « cross-examination »
22 sur affidavits.

23 MR. DOODY: Well, Your Honour, we
24 haven't been served with a summons to witness for
25 Mr. Giroux.

26 I expect I would take the position

1 that he has no relevant evidence to give. Mr. Rock
2 was the individual who made the decision, and he
3 will be indicating that in his affidavit material,
4 and as presently advised, I would submit that there
5 is no necessity for Mr. Giroux to be examined.

6 JUGE BEAUDOIN: Donc si vous voulez
7 examiner M. Giroux, vous devrez le signifier avec
8 une « sommence » dans les plus brefs délais.

9 M. D. RANCOURT: Absolument.

10 JUGE BEAUDOIN: Donc vous allez le
11 faire par quelle date?

12 M. D. RANCOURT: Très bientôt.

13 JUGE BEAUDOIN: Non, donnez-moi une
14 date.

15 M. D. RANCOURT: J'aurais besoin de
16 quelques jours. Laissez-moi voir.

17 JUGE BEAUDOIN: C'est quoi ça?

18 M. D. RANCOURT: Le 13 février,
19 c'est-à-dire lundi. Avant ou au plus tard lundi.

20 JUGE BEAUDOIN: 13 février. Donc
21 M. Giroux, c'est qui?

22 M. D. RANCOURT: C'est le chef du
23 Bureau des gouverneurs.

24 MR. DOODY: He is the Chair of the
25 Board.

26 JUSTICE BEAUDOIN: Chair of the

1 Board. And his first name?

2 MR. DOODY: Robert.

3 JUSTICE BEAUDOIN: Robert Giroux?

4 MR. DOODY: H'm.

5 JUSTICE BEAUDOIN: So he will serve
6 him with a summons to witness the 13th of February,
7 2012, or no later than.

8 M. D. RANCOURT: Oui.

9 JUSTICE BEAUDOIN: And I take it,
10 Mr. Doody, you will be bringing a motion to quash
11 this?

12 MR. DOODY: Well, I'll take
13 instructions. I may.

14 JUSTICE BEAUDOIN: All right.
15 So...

16 MR. DOODY: Perhaps we should
17 schedule that.

18 JUSTICE BEAUDOIN: Motion to quash
19 summons if...

20 MR. DOODY: That would be to
21 examine him next Monday. I would have no idea
22 whether Mr. Giroux is available and...

23 M. D. RANCOURT: Non, excusez-moi,
24 je veux juste clarifier. Il y a peut-être eu une
25 mal-entente.

26 Moi je veux dire que la

1 « summons » va être soumise avant le 13.

2 JUGE BEAUDOIN: Non, mais il faut
3 donner une date.

4 M. D. RANCOURT: Oui.

5 JUGE BEAUDOIN: O.K.?

6 M. D. RANCOURT: Alors pour la date
7 de « l'examination », je ne suis pas disponible.
8 Et là, j'ai amené les évidences, si la Cour
9 l'exige, mais j'ai une chirurgie dentaire, j'ai une
10 soumission au IPC qui est due et j'ai aussi un
11 « arbitration » dans lequel je dois participer, et
12 j'ai des lettres de toutes les personnes concernées
13 pour démontrer ça.

14 Et donc je suis complètement pris
15 jusqu'au 5 mars. Donc la prochaine date où je peux
16 être dans un « hearing », la prochaine date
17 significative où il peut se passer quelque chose
18 pour moi c'est le 5 mars.

19 JUSTICE BEAUDOIN: Mr. Rancourt is
20 saying he is not available until the 5th of March.

21 MR. DOODY: To do anything?

22 JUSTICE BEAUDOIN: To do anything?

23 M. D. RANCOURT: Oui.

24 JUSTICE BEAUDOIN: He says he is in
25 court and he has dental surgery.

26 MR. DOODY: I can indicate that Mr.

1 Rancourt, in correspondence with Mr. Dearden and I,
2 indicated that he was unavailable for, I think, a
3 two-week period because of the dental issue.

4 Mr. Dearden wrote to him twice and
5 asked him to explain what the dental issue was and
6 why it required two weeks.

7 Mr. Rancourt did not respond to
8 that and I was under the understanding that the...

9 And I could be wrong, but I had thought that the
10 labour arbitration was not proceeding in the next
11 three weeks.

12 M. D. RANCOURT: Donc c'est faux.
13 J'ai eu confirmation de mon syndicat que
14 l'arbitrage pour le travail se poursuit en mi-
15 février et j'ai une lettre de mon syndicat disant
16 que je dois être disponible pour des « meetings »
17 de préparation et pour étudier beaucoup de
18 documents en découverte.

19 Donc ça, c'est certainement
20 confirmé et j'ai une lettre ici pour le confirmer,
21 et j'ai aussi une lettre du dentiste et j'ai aussi
22 une soumission importante à faire dans un appel
23 juridique devant le « Information and Privacy
24 Commissionner » qui est dû le 17 février, que je
25 n'ai pas eu le temps de...

26 J'ai des gros, gros paquets de

1 documents à étudier pour répondre à cette
2 soumission-là.

3 Pour moi, c'est très clair que je
4 ne suis pas disponible avant le 5 mars.

5 MS J. ST. LEWIS: Initially, Mr.
6 Rancourt indicated that this delay is two weeks due
7 to a medical intervention, for which he has
8 provided no evidence. This new...

9 MR. DEARDEN: Justice Beaudoin?

10 JUSTICE BEAUDOIN: Yes.

11 MR. DEARDEN: I know that Mr. Doody
12 had something to say, but I couldn't hear what he
13 said.

14 I picked up that Mr. Rancourt has
15 now represented to the Court that he has dental
16 surgery and he is using that as a reason for...

17 JUSTICE BEAUDOIN: And his labour
18 arbitration is continuing.

19 MR. DEARDEN: Yeah.

20 JUSTICE BEAUDOIN: And he has an
21 appeal against the Privacy Commissioners.

22 MR. DOODY: Your Honour, did Mr.
23 Rancourt indicate when his legal arbitration is
24 resuming? Because I had understood it was not
25 resuming for the next little while.

26 JUSTICE BEAUDOIN: So Mr. Doody

1 said he thought that the labour arbitration was not
2 resuming. He is asking for a date.

3 Monsieur Rancourt, ça continue
4 quand?

5 M. D. RANCOURT: Donc la date,
6 c'est le 21 février. Comme j'ai dit, au milieu de
7 février.

8 JUSTICE BEAUDOIN: He says the 21st
9 of February.

10 MR. DOODY: One day?

11 MS J. ST. LEWIS: One day?

12 JUGE BEAUDOIN: Un jour?

13 MR. DEARDEN: Which is when our
14 evidence is to be filed. But then his labour
15 arbitration doesn't pick up again until April the
16 10th, and I think Justice Beaudoin pointed out that
17 I wrote Mr. Rancourt asking him to inform us of the
18 nature of the dental intervention that he says is
19 going to incapacitate him from February 22nd to
20 March 7th, and then I wrote him again and he chose
21 to ignore my request for an explanation.

22 He doesn't put any medical
23 evidence before the Court, or none that I have seen
24 at any rate, and he... This is nothing but a delay
25 tactic in my respectful submission.

26 JUSTICE BEAUDOIN: But we have a

1 date of March 5th. We do have a date of March 5th.

2 M. D. RANCOURT: H'm.

3 JUGE BEAUDOIN: Vous êtes

4 disponible le 5 mars?

5 M. D. RANCOURT: Oui.

6 JUSTICE BEAUDOIN: Okay. We have a

7 date of March 5th. Is everybody available March

8 5th?

9 MR. DOODY: To do what, Your
10 Honour?

11 JUSTICE BEAUDOIN: Cross-
12 examination.

13 MR. DEARDEN: Your Honour, I am,
14 believe it or not, back in Jamaica March the 3rd to
15 the 17th. I'm on March break with my kids.

16 JUSTICE BEAUDOIN: Well, there's
17 going to be a motion to quash, possibly a motion to
18 quash the summons in there.

19 MR. DOODY: Yeah. Mr...

20 MR. DEARDEN: I didn't pick up that
21 part, Justice Beaudoin. If I could just check what
22 I think I heard.

23 The affidavit that would be in
24 play in this champarty motion would be, of course,
25 Joanne St. Lewis, Mr. Rancourt has one in, and then
26 Allan Rock and Mr. Giroux?

1 JUSTICE BEAUDOIN: Okay. So
2 February 21st... Just so I can recap, Mr. Doody
3 will serve responding affidavits from Mr. Rock and
4 the solicitor for the University. You'll have Ms
5 Lewis.

6 Mr. Rancourt has said he is going
7 to be serving a summons to examine Mr. Giroux, and
8 he proposes to serve him on the 13th of February
9 with a Notice of Examination for a date.

10 I'm going to have to suggest that
11 it be a date no longer than February 28th.

12 M. D. RANCOURT: Monsieur le juge,
13 je croyais qu'on venait d'établir que je ne serais
14 pas disponible pour examiner quelqu'un avant le 5
15 mars?

16 MR. DEARDEN: What is the... What
17 would be happening before?

18 JUSTICE BEAUDOIN: Oh, okay. Okay.
19 He is going to serve him with a Notice of
20 Examination for March 5th, and you are going to
21 bring a motion to quash that, possibly, on the 5th.

22 So why don't we say that the
23 motion to quash the summons, if necessary, will
24 take place March 5th, because Mr. Dearden is not
25 available in any event.

26 M. D. RANCOURT: Je m'excuse, je

1 n'ai pas compris le dernier point.

2 JUGE BEAUDOIN: Attendez, je vais
3 répéter. Donc vous allez signifier votre sommation
4 à M. Giroux à comparaître à des interrogatoires le
5 5 mars.

6 M. D. RANCOURT: Oui.

7 JUGE BEAUDOIN: Ce jour-là, vous
8 dites que vous êtes disponible.

9 M. D. RANCOURT: H'm.

10 JUGE BEAUDOIN: Nous allons fixer
11 une date de motion pour, si nécessaire, s'il y a
12 lieu, annuler votre sommation, O.K.?

13 MR. DOODY: And Your Honour, if I
14 could indicate, it is possible that Mr.
15 Giroux...that I may choose not to bring a motion to
16 strike.

17 JUSTICE BEAUDOIN: Yeah. I just
18 said: « If necessary ».

19 MR. DOODY: And you're right. But
20 I don't know whether Mr. Giroux is available on
21 March 5th. I haven't canvassed his availability.

22 JUSTICE BEAUDOIN: Okay.

23 MR. DOODY: So may I suggest that
24 if we can't agree on another date, if I am going to
25 produce him, that we be able to avail ourselves of
26 the case management services?

1 JUSTICE BEAUDOIN: Well, what I
2 want to do is... So March 5th, we... It will
3 either be this. You tell him if... Either he...
4 We don't know if he's going to be available but if
5 you're not opposing his examination, why don't we
6 fix a date for all cross-examinations, including
7 Mr. Giroux, if you're going to produce him.

8 MR. DOODY: Well, we already set
9 the date. I thought we already set the date of the
10 24th for...

11 JUSTICE BEAUDOIN: No.

12 MR. DOODY: Oh, is that gone?

13 JUSTICE BEAUDOIN: No, that's the
14 date you proposed. That's not on for Mr. Rancourt.
15 So we've got to go to March, after Mr. Dearden
16 gets back.

17 MR. DOODY: And Mr. Dearden is back
18 when?

19 MS J. ST. LEWIS: After the 17th of
20 March.

21 MR. DOODY: And I don't have either
22 Mr. Rock's or Mr. Giroux's availability, nor do I
23 have the other witness' availability, once I
24 determine who it will be.

25 But why don't we... I know that
26 Mr. Rock's availability will be problematic.

1 That's my experience. It's very difficult to get
2 some time with him.

3 So we could propose dates, maybe
4 two alternative dates, and then if they don't work
5 come back? Can I propose that?

6 M. D. RANCOURT: Est-ce que je peux
7 faire des commentaires en réponse?

8 JUGE BEAUDOIN: Oui.

9 M. D. RANCOURT: Alors juste pour
10 clarifier ici, j'ai bien compris que le 5 mars,
11 s'il y a motion pour écraser le « summons »?

12 JUGE BEAUDOIN: Si nécessaire.

13 M. D. RANCOURT: Si nécessaire,
14 c'est ça. Cette motion serait servie le 5 mars,
15 est-ce que c'est ça?

16 JUGE BEAUDOIN: Ça serait servi.
17 Ce serait pour avoir une lettre. Il faudrait que
18 monsieur... Vous allez signifier le 13.

19 M. D. RANCOURT: Oui.

20 JUGE BEAUDOIN: Donc ça donne,
21 Maître Doody, une semaine, sinon pas plus, pour en
22 discuter avec... Voir la motion, discuter, voir
23 s'il va demander de radier la « semence » que vous
24 avez émise ou non.

25 S'il y a lieu, il va vous
26 signifier avec une motion, qui devrait être

1 entendue le 5 mars.

2 M. D. RANCOURT: Entendue le 5
3 mars. Donc est-ce que je pourrais, si possible,
4 m'assurer que je vais recevoir le « record motion »
5 sept jours avant le 5 mars, au plus tard?

6 MR. DOODY: Sorry, I missed all
7 that.

8 MS J. ST. LEWIS: He's asking
9 whether he can get it seven days before.

10 JUSTICE BEAUDOIN: He wants to know
11 if the motion is going to be heard on the 5th of
12 March, will you serve it by the 7th day?

13 MR. DOODY: Yes. Yes.

14 JUSTICE BEAUDOIN: Okay.

15 M. D. RANCOURT: Et donc ce serait
16 quelle date? Sept jours ouvrables de la Cour,
17 donc...

18 JUGE BEAUDOIN: Ce serait...

19 M. D. RANCOURT: Le 23 février? Si
20 j'ai bien compté, je ne le sais pas.

21 JUGE BEAUDOIN: Oui, le 23.

22 He'll serve you with it on the
23 13th, You will serve him with a Notice of Motion to
24 quash the summons, if you are going to do that, by
25 the 23rd.

26 MR. DOODY: I thought it was five

1 days before. Is it five days?

2 JUSTICE BEAUDOIN: He's asked for
3 seven. It's seven. You don't include weekends.

4 MR. DOODY: Surely the 23rd is more
5 than... And I don't want to be picky, but isn't
6 the 23rd seven days before the 1st?

7 Which I will be arguing the motion
8 on the 5th.

9 M. D. RANCOURT: C'est des jours de
10 cour qu'on a.

11 MR. DOODY: I would have thought
12 seven days was the 27th.

13 JUSTICE BEAUDOIN: Court days don't
14 include weekends. The period of time, if you would
15 have agreed, is more than seven, but the Notice of
16 Motion only requires...

17 MR. DOODY: It's seven days, not
18 including...

19 JUGE BEAUDOIN: Ça prend uniquement
20 quatre jours.

21 MR. DOODY: Sorry, including
22 weekends.

23 M. D. RANCOURT: Oui. Monsieur le
24 juge, la...

25 JUGE BEAUDOIN: Ça prend uniquement
26 quatre jours.

1 M. D. RANCOURT: Monsieur le juge,
2 la raison que j'ai demandé sept jours, c'est parce
3 que c'est précisément dans la période où j'ai tous
4 ces autres engagements que j'ai déjà décrits.

5 JUGE BEAUDOIN: Je vais préciser
6 sept jours, mais je vous donne trois jours
7 additionnels.

8 M. D. RANCOURT: Oui.

9 JUGE BEAUDOIN: Je comprends les
10 « weekends » là.

11 M. D. RANCOURT: J'apprécie
12 beaucoup.

13 JUGE BEAUDOIN: O.K.? Donc il
14 faudrait que ce soit signifié le 27 février.

15 MR. DOODY: Thank you.

16 JUSTICE BEAUDOIN: The 27th of
17 February.

18 MR. DOODY: And Your Honour, can we
19 agree... Sorry. Can we have an order that service
20 be valid by e-mail? And the reason for that is
21 that Mr. Rancourt is self-represented and
22 therefore, if I can't personally serve him, I have
23 to serve him by mail, and it takes deemed five days
24 afterward. We have been communicating by e-mail
25 throughout.

26 JUGE BEAUDOIN: Est-ce que vous

1 êtes...

2 M. D. RANCOURT: Oui et non.

3 J'aimerais préciser. Ce que j'aimerais beaucoup et
4 ce que Me Dearden faisait avec moi, qui m'aide
5 beaucoup, parce que c'est souvent des grosses piles
6 de documents que je ne peux pas imprimer, c'est que
7 ce me soit servi par courriel et le même jour, par
8 service de courrier rapide, m'être donné à la
9 maison.

10 JUSTICE BEAUDOIN: Okay. So e-mail
11 and by---

12 MR. DOODY: That's fine.

13 JUSTICE BEAUDOIN: ---same-day
14 courier.

15 MR. DOODY: Yes. Yes, Your Honour.
16 As long as the courier can be left at your address.

17 M. D. RANCOURT: Oui, bien sûr.

18 MR. DOODY: Thank you.

19 JUSTICE BEAUDOIN: Okay? Same-day
20 courier?

21 MR. DOODY: Same day and left at
22 the address, yes.

23 JUSTICE BEAUDOIN: Same day and
24 left at the address, yes.

25 O.K., d'accord. Donc il faut
26 fixer... On est toujours là à fixer des dates

1 d'interrogatoire. Est-ce qu'on pourrait le
2 faire... Autant que possible, on va préciser des
3 dates.

4 We need to, as much as possible,
5 fix dates for cross-examination. We have a
6 problem. We know when Ms St. Lewis and Mr. Dearden
7 are available and when Mr. Rancourt is available.
8 We don't know when Mr. Rock and the other parties
9 may be available, so...

10 M. D. RANCOURT: Est-ce que je peux
11 faire un commentaire général à propos des dates qui
12 s'en viennent?

13 Je veux assurer la Cour que ce
14 n'est pas du tout mon intention de ralentir cette
15 action. Je ne veux pas aller dans cette direction-
16 là.

17 Je veux simplement m'assurer
18 d'avoir exactement mes droits mais en tant que
19 personne seule, le seul aide légal que j'ai c'est
20 des avocats qui agissent, qui m'aident de façon
21 probono, et donc la communication n'est pas
22 toujours facile.

23 Ça prend du temps à les rejoindre
24 des fois, etc., et donc c'est pour ça que de façon
25 générale, avant quelque chose de majeur, que je
26 doive répondre à un document ou que je doive

1 répondre à un document, je demanderais quatorze
2 jours, deux semaines, de façon générale, pour
3 accommoder le fait que je suis auto-représenté et
4 que l'asymétrie de ressources est très grande.

5 Je n'ai pas une équipe d'avocats
6 qui peut aller faire la photocopie et préparer le
7 tout dans l'ordre, etc., et il faut dire que dans
8 cet action, d'après M. Dearden, le « trial » est en
9 novembre.

10 Donc il n'y a quand même pas une
11 urgence à tout casser à quelques semaines ou à
12 quelques mois près, et moi je demande juste que
13 j'aie la chance de bien préparer chaque étape et de
14 bien pouvoir faire ça en consultant mes avocats.

15 C'est ce que je demande, de façon
16 générale. Donc par exemple, c'est très difficile
17 pour moi de subir le même jour deux interrogatoires
18 ou d'être obligé de faire deux interrogatoires le
19 même jour.

20 Si c'était possible, j'aimerais
21 pouvoir en faire un et prendre quelques jours,
22 parler à mes consultants et faire l'autre, me
23 reposer et...

24 JUGE BEAUDOIN: C'est pour ça qu'on
25 vous donne les affidavits au préalable.

26 M. D. RANCOURT: Oui.

1 JUGE BEAUDOIN: C'est pour ça.

2 Vous aurez 14 jours à vous préparer.

3 M. D. RANCOURT: Oui. Tout ce que
4 je veux dire, c'est que c'est très difficile pour
5 moi une matinée faire une personne et tout de suite
6 l'après-midi faire une deuxième personne.

7 C'est très exigeant, et ça
8 demande... Vous savez, ce sont tous des processus
9 qui sont difficiles. Je n'ai jamais fait un
10 « cross-examination » sur affidavit de ma vie, et
11 c'est des processus qui demandent à...

12 Il faut intégrer le processus
13 aussi. Il faut se dire: « Bon, qu'est-ce qui s'est
14 passé? Qu'est-ce que j'aurais dû faire? »

15 Il faut attendre un peu et se
16 donner quelques jours pour faire le prochain
17 ensuite.

18 JUGE BEAUDOIN: Mais toutefois,
19 c'est votre motion de champartie.

20 M. D. RANCOURT: Absolument.

21 JUGE BEAUDOIN: O.K.?

22 M. D. RANCOURT: Donc ça ne me
23 dérange pas de prendre un petit peu plus de temps.

24 JUGE BEAUDOIN: Mais on ne donne
25 jamais aux gens 14 jours entre les examens. Ce
26 n'est jamais fait.

1 M. D. RANCOURT: Non, pas entre...

2 JUGE BEAUDOIN: Vous avez entraîné
3 ces gens-là dans votre... C'est vous qui apportez
4 cette motion.

5 M. D. RANCOURT: Oui.

6 JUGE BEAUDOIN: Donc il faut
7 procéder dans les plus brefs délais. On ne vous
8 donne pas automatiquement 14 jours sans savoir
9 pourquoi.

10 M. D. RANCOURT: Non, non. Je
11 disais ça de façon...

12 JUGE BEAUDOIN: Mais effectivement,
13 t'as plus de 14 jours.

14 M. D. RANCOURT: Oui. Non, je
15 disais ça de façon générale pour les grandes
16 occasions, les grands documents que je dois
17 préparer,---

18 JUGE BEAUDOIN: On peut...

19 M. D. RANCOURT: ---des choses
20 comme ça.

21 JUGE BEAUDOIN: On va en parler,
22 mais on fixe des dates pour des interrogatoires là.

23 M. D. RANCOURT: Oui.

24 JUGE BEAUDOIN: Puis ils vont être
25 des interrogatoires tous dans la même époque, plus
26 ou moins.

1 M. D. RANCOURT: C'est très
2 difficile pour moi.

3 JUSTICE BEAUDOIN: Mr. Rancourt is
4 saying he wanted 14 days between cross-examinations
5 or time between, and I'm just saying to him that
6 generally, we can't give him that.

7 He is bringing the champarty
8 motion. He is trying to stop this action, and it's
9 got to be dealt with, so...

10 Il faut fixer les dates des
11 interrogatoires. Donnez-moi vos dates de
12 disponibilité.

13 M. D. RANCOURT: Bien, j'ai
14 tendance à être plus disponible à partir du 5 mars
15 là.

16 JUGE BEAUDOIN: O.K. D'accord.

17 M. D. RANCOURT: Et les... Pour...

18 JUGE BEAUDOIN: On parle d'après le
19 5 mars, puis on sait que M. Dearden---

20 M. D. RANCOURT: Oui.

21 JUGE BEAUDOIN: ---ne revient pas
22 avant le 17.

23 M. D. RANCOURT: Et ma contrainte
24 principale après le 5 mars, c'est que les jeudis
25 sont bloqués pour moi, complètement bloqués, tous
26 les jeudis.

1 JUGE BEAUDOIN: Pourquoi?

2 M. D. RANCOURT: Parce que je fais
3 une émission de radio.

4 JUSTICE BEAUDOIN: So Mr. Rancourt
5 says he is not available on any Thursday.

6 MR. DOODY: The show, I
7 understands, starts at 5:00.

8 MR. DEARDEN: Well, let's do March
9 23rd, it's a Friday.

10 MR. DOODY: The show, I understand,
11 starts at 5:00 p.m., on Thursdays.

12 M. D. RANCOURT: C'est un programme
13 que je dois préparer, et je me donne la journée de
14 jeudi pour le préparer. Je suis le « producer » et
15 le « host ».

16 JUSTICE BEAUDOIN: March 23rd? Mr.
17 Dearden proposed March 23rd.

18 MR. DOODY: For cross-examinations?

19 M. D. RANCOURT: Pour?

20 JUGE BEAUDOIN: H'm.

21 MR. DOODY: That's fine with me. I
22 have to check with my witnesses, but subject to
23 that, it's fine with me.

24 M. D. RANCOURT: Le 23 mars, c'est
25 mon anniversaire, donc j'ai tendance à faire des
26 choses en famille et...

1 Je ne sais pas. Si on pouvait le
2 faire le lundi d'après, ce serait mieux.

3 JUSTICE BEAUDOIN: It's his
4 birthday, on the 23rd.

5 M. D. RANCOURT: Le 26 serait plus
6 agréable.

7 MR. DOODY: I can't tell you how
8 many times I've been in court on my birthday.

9 M. D. RANCOURT: Je ne suis pas un
10 avocat moi.

11 JUSTICE BEAUDOIN: So have I, but
12 anyway. The 26th is being proposed.

13 MR. DOODY: Euh...

14 MR. DEARDEN: I'm sorry, Justice
15 Beaudoin?

16 JUSTICE BEAUDOIN: The 26th?

17 MR. DEARDEN: Monday is...
18 Professor St. Lewis teaches that day. She is
19 available the 27th, as am I.

20 MR. DOODY: I cannot do the 26th
21 either.

22 JUSTICE BEAUDOIN: The 27th?

23 MR. DOODY: The 27th is okay.

24 MR. DEARDEN: March 27th?

25 JUSTICE BEAUDOIN: Okay. March
26 27th.

1 Contre-interrogatoire.

2 M. D. RANCOURT: Alors excusez-moi,
3 je voudrais ouvrir une parenthèse, si possible.

4 Donc si je comprends bien, le 27
5 mars, ce serait une journée pour examiner mon
6 témoin hors-cours?

7 JUGE BEAUDOIN: Ça, c'est les
8 contre-interrogatoires sur les affidavits.

9 M. D. RANCOURT: Ah, sur les
10 affidavits sur la motion...

11 JUGE BEAUDOIN: Non, non, non.
12 Non, non, non.

13 M. D. RANCOURT: Attendez.
14 Excusez-moi. Si je comprends bien, dans la
15 procédure, il faut d'abord examiner nos témoins
16 avant de contre-examiner les affidavits. Donc...

17 JUGE BEAUDOIN: Mais...

18 M. D. RANCOURT: Donc c'est
19 possible que le 27 devienne... Soit que M. Giroux
20 va être examiné le 5, s'il n'y a pas une contre-
21 motion, ou qu'il y aura cette contre-motion qui
22 sera entendue le 5, si je comprends bien.

23 Si la contre-motion ne marche pas
24 ou s'il n'y a pas de contre-motion, le 27 serait la
25 date pour examiner mon témoin, M. Giroux?

26 JUGE BEAUDOIN: Ce serait pour

1 examiner M. Rock, Mme Lewis, vous-même, l'avocat et
2 M. Giroux.

3 M. D. RANCOURT: Tout dans la même
4 journée?

5 JUGE BEAUDOIN: Oui.

6 M. D. RANCOURT: Je ne pense pas
7 que c'est raisonnable. C'est une motion de
8 « champarty ». Il y a beaucoup, beaucoup de
9 questions. Il y a des éléments à...

10 Je veux dire, c'est un « cross-
11 examination ». Pour moi, c'est inconcevable de
12 faire ça dans une journée.

13 JUGE BEAUDOIN: Mais on va donner
14 une journée, pour voir. On va voir.

15 M. D. RANCOURT: D'accord.

16 JUGE BEAUDOIN: On commence.

17 M. D. RANCOURT: Et donc on va
18 voir. On commence, d'accord. Et donc si...

19 JUSTICE BEAUDOIN: Does anybody
20 have the 28th, if necessary?

21 MS J. ST. LEWIS: Sorry, I teach on
22 Mondays and Wednesdays.

23 MR. DEARDEN: Sorry, Justice
24 Beaudoin?

25 JUSTICE BEAUDOIN: Mr. Rancourt
26 doesn't think that a day is going to be enough.

1 MR. DOODY: What time do you teach?

2 MR. DEARDEN: So are we looking at
3 the 27th and another date?

4 JUSTICE BEAUDOIN: Yeah.

5 MR. DEARDEN: It should be back to
6 back, right?

7 JUSTICE BEAUDOIN: As close as
8 possible.

9 MR. DEARDEN: So...

10 JUSTICE BEAUDOIN: Wednesday the
11 28th, Ms St. Lewis teaches.

12 MS J. ST. LEWIS: Yes. So I'm
13 saying if you can confirm me for the 27th, because
14 I'm not available on the 28th, that would be fine.

15 MR. DOODY: And then we would do
16 the other witnesses on the 28th.

17 MS J. ST. LEWIS: Yes. So I'm
18 saying as long as I'm on the 27th, there is no
19 scheduling difficulty, but I cannot do the 28th.

20 MR. DOODY: Okay.

21 MS J. ST. LEWIS: And you need them
22 back to back.

23 MR. DEARDEN: As long as... I know
24 that somebody was speaking there.

25 JUSTICE BEAUDOIN: Ms St. Lewis is
26 saying she wants to go on the 27th.

1 MR. DEARDEN: Yes, because she is
2 available, and then the other day you pick, either
3 the 26th or the 28th, on the other side, that would
4 be somebody other than Professor St. Lewis and
5 although she might...

6 Unless she stated the contrary,
7 that I didn't hear, we could do the other people on
8 either the 26th or the 28th.

9 MR. DOODY: All right. It's the
10 28th, Mr. Dearden. The 26th, I'm not available.

11 JUSTICE BEAUDOIN: The 28th?

12 MR. DOODY: And I believe somebody
13 else wasn't.

14 JUGE BEAUDOIN: Vous êtes
15 disponible le 28?

16 M. D. RANCOURT: Oui, je suis
17 disponible.

18 JUSTICE BEAUDOIN: Okay. The 27th
19 and the 28th. And Ms St. Lewis for sure on the
20 27th.

21 MR. DOODY: And we can schedule, I
22 would submit, at least two witnesses on the 27th.

23 M. D. RANCOURT: Donc j'aimerais
24 demander une précision à la Cour parce que dans le
25 cas de M. Giroux, c'est une « examination » d'un
26 témoin, qui est très différent, qui comprend

1 certaines différences par rapport à une
2 « examination » d'affidavit.

3 Et si je comprends bien, les
4 règles sont telles qu'on ne peut pas soumettre
5 d'évidence par affidavit pour la motion une fois
6 qu'on a examiné les affidavits, mais il y a une
7 possibilité que je veuille soumettre une telle
8 évidence ayant examiné le témoin, M. Giroux, et
9 donc j'ai besoin du temps pour faire ça.

10 JUGE BEAUDOIN: On verra. Non,
11 mais on verra. On ne pourra pas tout anticiper.

12 M. D. RANCOURT: D'accord. Mais ça
13 va être clair que le premier témoin, s'il y a lieu,
14 ce serait M. Giroux, ce 27, n'est-ce pas? Si je
15 comprends bien.

16 MR. DOODY: Le 8 février. There is
17 six weeks between now and then, with the greatest
18 of respect. He has time to prepare, does he not?

19 JUSTICE BEAUDOIN: No, what he is
20 saying is... What Mr. Rancourt is saying is he
21 wants to examine Mr. Giroux first, if he's going to
22 examine him, because he may, after his examination
23 pending as a witness on a motion, he may want to
24 deliver a further affidavit and so he is saying...

25 And because he can't deliver an
26 affidavit after cross-examinations, he wants to

1 examine Mr. Giroux first.

2 Because he may want to deliver a
3 further affidavit, and my point being that we don't
4 know if he wants to deliver a further affidavit.

5 MR. DOODY: We don't know whether
6 Mr. Giroux is going to be cross-examined. Sorry,
7 is that... And we don't know...

8 JUSTICE BEAUDOIN: Given that Mr.
9 Rancourt is saying that: « I might want to deliver
10 a further affidavit », that may impact your
11 decision on whether or not you'll want to bring a
12 motion.

13 MR. DOODY: I understand.

14 JUGE BEAUDOIN: Bon. Les
15 interrogatoires sont prévues pour le 27 et le 28,
16 et M. Giroux, possiblement, s'il y a lieu.

17 M. D. RANCOURT: Oui, c'est ça.
18 Très bien. Je pense qu'à partir de ce moment-ci,
19 on est allé loin.

20 JUGE BEAUDOIN: Je pense que la
21 seule chose qu'on peut faire après ça, c'est de
22 fixer une date pour une conférence pour voir
23 effectivement est-ce que les interrogatoires ont eu
24 lieu et est-ce qu'il y a des refus ou quoi que ce
25 soit suite aux interrogatoires.

26 Donc on fixerait une conférence

1 relative à la cause par la suite.

2 So I'm saying after the
3 examinations, we should probably have a follow-up
4 case conference to see if there are refusals and if
5 we need to schedule the next steps before we
6 actually schedule the motion date.

7 Could you go in my office and get
8 my schedule, the Court schedule, or get a copy.
9 It's a multi-coloured court schedule.

10 So let's just leave that aside.
11 Now the motion to quash the summons, if necessary,
12 will be March 5th at 10:00 a.m., and that will be
13 served by February 27th, by e-mail and by same-day
14 courier service left at the address.

15 Cross-examinations on the
16 affidavits will take place on the 27th and 28th for
17 Ms St. Lewis, and examination of the witness if the
18 motion isn't quashed, Mr. Giroux, will also take
19 place at that time.

20 We will have a case conference to
21 follow.

22 M. D. RANCOURT: Et M. Giroux sera
23 le premier à être examiné, s'il y a lieu? Et
24 j'aurais une question aussi par rapport à M.
25 Giroux.

26 JUGE BEAUDOIN: On ne sait pas sa

1 disponibilité.

2 M. D. RANCOURT: Non. Mais s'il
3 est examiné, il devra être le premier.

4 JUGE BEAUDOIN: Pourquoi?

5 M. D. RANCOURT: Pour la raison
6 qu'on vient de discuter, c'est-à-dire qu'il est un
7 témoin versus un examination sur les affidavits, et
8 donc il faut que j'aie l'occasion de mettre des
9 évidences supplémentaires suite à son témoignage,
10 dans la motion.

11 JUGE BEAUDOIN: O.K.

12 So he is saying it has to be...he
13 has to be first, because depending on his evidence,
14 he may want to give a supplementary affidavit,
15 which would throw all the schedule off.

16 MR. DEARDEN: Sorry, Justice
17 Beaudoin. Could you just repeat that please?

18 JUSTICE BEAUDOIN: Well, Mr.
19 Rancourt is saying if Mr. Giroux is going to be
20 examined, he has to be examined first so he can
21 determine whether or not he wants to deliver a
22 supplementary affidavit. That would throw off all
23 the further examinations, because he cannot deliver
24 an affidavit after he has cross-examined.

25 So we have to find an earlier date
26 for Mr. Giroux. Either you quash the summons on

1 the 5th of March, or we examine Mr. Giroux before,
2 so that we would have enough time for Mr. Rancourt
3 to deliver a further affidavit.

4 MR. DOODY: And Mr. Dearden is away
5 from the 5th through the 17th?

6 JUSTICE BEAUDOIN: But that doesn't
7 implicate Mr. Dearden, that implicates you and Mr.
8 Giroux.

9 MR. DOODY: Does Mr. Dearden not
10 have a right to examine the witness?

11 JUSTICE BEAUDOIN: He does.

12 MR. DOODY: If Mr. Giroux is served
13 with a summons, does Mr. Dearden not have a right
14 to examine him?

15 JUSTICE BEAUDOIN: He's a witness
16 on a pending motion, but...

17 MR. DOODY: I don't care. I don't
18 know if he cares. I haven't spoken to him about
19 it. Mr. Dearden, did you get that?

20 MR. DEARDEN: No, I didn't hear,
21 Mr. Doody.

22 MR. DOODY: Okay. What I said, Mr.
23 Dearden, was that the issue now is that we are
24 seeking to schedule a date for the examination of
25 Mr. Giroux, in the event I don't bring or succeed
26 in a motion to quash the summons, and so then the

1 question is would you want to be present at that
2 examination to put questions to the witness?

3 Because if you do, then it would
4 have to be the week of the 19th of March but if you
5 don't, it could be at an earlier date.

6 MR. DEARDEN: I'll ask through this
7 phone call if Ms Semenova is available when I'm out
8 of country, March 5 to 17.

9 MS A. SEMENOVA: Yes, I am.

10 MR. DEARDEN: Because if she is and
11 you can get an earlier date for that, then let's do
12 it earlier as opposed to the week fo the 19th.

13 MR. DOODY: All right. And all of
14 this, of course, is subject to Mr. Giroux's
15 availability, but why don't we look at a date, say
16 the 12th or 13th of March?

17 JUGE BEAUDOIN: Vous êtes
18 disponible, Monsieur Rancourt?

19 M. D. RANCOURT: Les 12 et 13 mars,
20 oui, je suis disponible.

21 JUGE BEAUDOIN: Est-ce qu'on
22 pourrait dire soit le 12 ou le 13?

23 M. D. RANCOURT: Oui, on peut.
24 Donc une autre clarification, et je m'excuse si je
25 parle complètement... Je ne suis pas du tout
26 familier avec beaucoup de ces processus-là.

1 Donc M. Giroux serait dans un sens
2 mon témoin, et donc M. Dearden, si on veut, aurait
3 le droit de faire une contre-"examination" de M.
4 Giroux.

5 Est-ce que c'est comme ça que ça
6 marche?

7 JUGE BEAUDOIN: C'est un examen.
8 Un contre-examen, oui.

9 M. D. RANCOURT: Donc à ce moment-
10 là, ça devient une contre-examination pour eux?

11 JUGE BEAUDOIN: Oui.

12 M. D. RANCOURT: Et après, je ferai
13 un « re-direct » si je comprends bien.

14 JUGE BEAUDOIN: « Re-exam », oui.

15 M. D. RANCOURT: Ou « re-exam »,
16 c'est bien ça?

17 JUGE BEAUDOIN: Oui.

18 M. D. RANCOURT: Et donc est-ce que
19 ce serait possible de...

20 MR. DOODY: And sorry, Your Honour.

21 With respect, I assume we are talking about rights
22 of parties.

23 I assume if Mr. Giroux does not
24 file an affidavit, then the examination would
25 proceed, if I understand correctly, with Mr.
26 Giroux... Sorry, Mr. Rancourt conducting an

1 examination-in-chief? It's his witness?

2 JUSTICE BEAUDOIN: H'm.

3 MR. DOODY: Followed by me
4 conducting an examination, and I would have thought
5 that since it's my friend's witness, I would be
6 entitled to cross-examine Mr. Giroux, followed by
7 Mr. Dearden, who also would be entitled to cross-
8 examine, followed by Mr. Rancourt, who would
9 conduct an examination-in-chief (sic), is that
10 correct?

11 JUSTICE BEAUDOIN: A re-
12 examination.

13 MR. DOODY: Sorry, a re-
14 examination?

15 M. D. RANCOURT: Non, je
16 préférerais faire une « ré-examination » après
17 chaque « cross-examination ».

18 JUGE BEAUDOIN: Non, par la suite.

19 MR. DOODY: No.

20 MME J. ST. LEWIS: Non, pas du
21 tout.

22 M. D. RANCOURT: Après les deux?

23 JUGE BEAUDOIN: Après les deux.

24 M. D. RANCOURT: D'accord. Et donc
25 dans le scénario qui vient d'être décrit, moi je
26 suis un peu inquiet et j'aimerais demander si ce

1 serait possible de faire commencer M. Giroux comme
2 ce qu'on appelle en anglais un « hostile witness »,
3 où j'aurais le droit d'examiner en « cross-
4 examination »?

5 JUGE BEAUDOIN: Non. Ça ne se
6 fait...

7 MR. DOODY: It's a little offensive
8 to Mr. Giroux, whom I haven't met.

9 JUGE BEAUDOIN: Ça ne se fait pas.

10 M. D. RANCOURT: Donc...

11 JUGE BEAUDOIN: Ça...

12 M. D. RANCOURT: D'accord. Donc
13 c'est amené plus tard, à une autre étape?

14 JUGE BEAUDOIN: Effectivement, ça
15 n'a pas lieu.

16 M. D. RANCOURT: D'accord.

17 JUGE BEAUDOIN: Ça...

18 M. D. RANCOURT: Je posais
19 simplement la question.

20 JUGE BEAUDOIN: J'ai du mal à
21 comprendre où ça aurait lieu.

22 M. D. RANCOURT: D'accord.

23 JUGE BEAUDOIN: Quand vous
24 convoquez un témoin, vous acceptez leur témoignage.

25 M. D. RANCOURT: Très bien.

26 JUGE BEAUDOIN: C'est votre témoin

1 et si cette personne donne un témoignage que vous
2 n'aimez pas, vous êtes pris avec.

3 M. D. RANCOURT: D'accord.
4 D'accord.

5 JUGE BEAUDOIN: C'est votre témoin.

6 M. D. RANCOURT: Oui.

7 JUGE BEAUDOIN: Je vais vous donner
8 un exemple. On vient d'avoir un procès puis le
9 défendeur a appelé comme son témoin une personne
10 qui a donné de la preuve complètement à l'appui de
11 la partie demanderesse, donc qui a complètement
12 annulé sa défense.

13 En appelant un témoin comme ça...
14 Il n'y a pas eu lieu de le traiter comme un témoin
15 hostile, parce que cette personne-là n'avait pas
16 donné un témoignage antérieur qui était différent.

17 Il faut donner un témoignage
18 antérieur qui est différent, qui était...

19 « Bon, vous m'avez dit auparavant
20 quelque chose qui était à mon appui et maintenant
21 vous dites quelque chose qui est complètement
22 différent. Vous êtes devenu adverse. »

23 À ce moment-là, vous pouvez
24 demander une déclaration, mais s'il n'y a pas eu de
25 déclaration antérieure, il n'y a pas lieu, donc
26 c'est le risque.

1 Quand on appelle une personne
2 comme son témoin et on ne sait pas exactement ce
3 que la personne va dire...

4 C'et à vous si vous voulez appeler
5 M. Giroux comme votre témoin à l'appui de votre
6 motion, mais vous acceptez ses réponses.

7 M. D. RANCOURT: J'aurais une autre
8 question de cet ordre-là, si vous permettez.

9 Je viens d'apprendre dans le
10 factum de M. Doody, qui est le factum qu'il avait
11 préparé pour intervenir dans la motion de
12 champartie, que M. Rock lui-même...

13 MR. DEARDEN: What is happening,
14 Justice Beaudoin?

15 JUSTICE BEAUDOIN: Okay. I was
16 just explaining to Mr. Rancourt that he... He
17 wanted to get a declaration that Mr. Giroux would
18 be hostile or adverse in advance, and I said he
19 couldn't do that.

20 He is serving a summons to Mr.
21 Giroux as his witness, so therefore he accepts his
22 evidence as he gives it and it becomes his
23 evidence. It's his witness.

24 He cannot declare or have Mr.
25 Giroux declared hostile or adverse in advance,
26 unless he can point to a statement that Mr. Giroux

1 made to him beforehand that said or that was in
2 support of his position or something.

3 But he can't get a ruling in
4 advance. He runs the risk that if he calls Mr.
5 Giroux as his witness, it's his evidence as part of
6 his case.

7 I gave him an example of a trial
8 two weeks ago where the defendant called a witness
9 and the witness completely corroborated the
10 plaintiff, so therefore the defendant lost.

11 So that's the danger when you call
12 a witness and you don't know what they are going to
13 say. They become part of your case.

14 And then Mr. Rancourt was looking
15 for something else?

16 M. D. RANCOURT: Évidemment, je
17 viens d'être mis au courant d'informations suite à
18 ce factum que M. Doody a soumis dans la motion pour
19 intervenir.

20 JUSTICE BEAUDOIN: He's referring
21 to Mr. Doody's factum on motion to intervene.

22 M. D. RANCOURT: J'ai appris que M.
23 Doody avait l'intention de soumettre un affidavit
24 d'un avocat.

25 JUSTICE BEAUDOIN: H'm. He's going
26 to be submitting an affidavit from a lawyer.

1 M. D. RANCOURT: Cet avocat est un
2 avocat qui est impliqué pour l'Université, dans la
3 cause d'arbitrage pour le travail.

4 JUSTICE BEAUDOIN: This lawyer is
5 involved on the labour arbitration.

6 M. D. RANCOURT: Et j'aimerais être
7 certain... Parce que l'avocat en chef dans cette
8 cause, l'avocat pour l'Université, en chef, dans
9 cette cause, et qui a fait toutes les présentations
10 devant l'arbitre et qui est vraiment le porte-
11 parole de l'Université, c'est un M. Harnden (ph),
12 et je voudrais m'assurer que l'affidavit va venir
13 de M. Harnden, qui est la personne qui a prononcé
14 les mots que je cite dans mon évidence et qu'on
15 veut contrarier.

16 J'aimerais m'assurer que c'est bel
17 et bien M. Harnden qui va soumettre cet affidavit-
18 là.

19 JUSTICE BEAUDOIN: Mr. Rancourt
20 wants to be sure it's Mr. Harnden who is going to
21 be filing the affidavit on behalf of the
22 University.

23 MR. DOODY: Well, Your Honour, it's
24 my affidavit and I will choose what witness, but I
25 will certainly take into consideration the fact
26 that Mr. Rancourt thinks he wants to cross-examine

1 Mr. Harnden. But I will make the decision as to
2 which witness I will file.

3 M. D. RANCOURT: Et donc c'est
4 simplement pour dire à M. Doody que les propos que
5 j'ai cités et qu'on veut contredire on été faits
6 par M. Harnden, et donc je pense que la chose
7 appropriée, ce serait que l'affidavit vienne de
8 lui.

9 JUGE BEAUDOIN: Et M. Doody vous a
10 entendu.

11 M. D. RANCOURT: Est-ce que M.
12 Doody est d'accord?

13 JUGE BEAUDOIN: Non.

14 MR. DOODY: No.

15 ME ST. LEWIS: Non.

16 JUGE BEAUDOIN: Non.

17 M. D. RANCOURT: Donc ce ne sera
18 pas M. Harnden?

19 JUGE BEAUDOIN: On ne le sait pas.

20 M. D. RANCOURT: Ah, d'accord.

21 O.K.

22 JUGE BEAUDOIN: Bon, on va fixer
23 une date pour une conférence, pour avoir une
24 conférence relative à la cause encore, la semaine
25 du 26 mars.

26 Je propose le vendredi de cette

1 semaine-là, encore à 9 h 00. Ce serait le 30.

2 So I'm proposing, Mr. Dearden, a
3 follow-up conference on the 30th of March to see
4 how we made out with the examinations and are there
5 refusals that need to be dealt with, motions
6 arising out of the examinations, before we schedule
7 the date. So that is the 30th, at 9:00 a.m. So we
8 have...

9 That is as far as we can go with
10 the champarty. I'm just going to recap right now.

11 I have indicated that the
12 University does not need to bring a leave to
13 intervene on that motion, because they are a party
14 that is affected by the Order pursuant to Rule
15 37.07(1), and that's a right that they have.

16 They have a right to respond to
17 that motion because they are affected by that
18 motion.

19 I deny Mr. Rancourt's request to
20 stay any discoveries in the main action because of
21 the champarty motion.

22 I have taken the view that the
23 champarty motion only affects the agreement between
24 Ms Lewis and the University and does not affect the
25 merits of her defamation action. It only affects
26 how it is funded and so therefore, that should go

1 ahead. Examinations for discovery should be
2 scheduled independently.

3 We have indicated that the
4 champarty motion, the responding material, the
5 material will be filed by February 21st, that's Mr.
6 Rock and a lawyer to be named, Ms Lewis.

7 Mr. Rancourt was saying before
8 examinations for discovery or that cross-
9 examinations would be held, that he wanted a motion
10 for open-court, a motion to be heard in advance,
11 and I have indicated to him that I would not delay
12 the discovery, cross-examinations, and that I would
13 reject his motion for open court, it not being
14 applicable to cross-examinations or examinations
15 for discovery that are out of court, and that I
16 adopt the reasons of Master McLeod.

17 He is to serve a summons to
18 witness to Mr. Giroux, whom he intends to examine
19 in advance of the champarty motion, no later than
20 the 13th of February, with a motion...with an
21 examination date of March 5th.

22 If Mr. Doody takes instructions to
23 quash that summons, he will have a motion
24 returnable on March 5th and I will have to...

25 Yeah, I will confirm that with the
26 trial coordinator, but it will be March 5th. He

1 will serve that by the 27th of February, 2012, by
 2 e-mail and by same-day courier left at Mr.
 3 Rancourt's address.

4 If he doesn't...

5 MR. DEARDEN: Sorry, Justice
 6 Beaudoin. Sorry to interrupt. While you are the
 7 service by e-mail or same-day courier, we had an
 8 agreement that that is the way that we won't do
 9 service going forward, of any documents, that it
 10 can be...

11 JUSTICE BEAUDOIN: Is it by all
 12 parties?

13 MR. DEARDEN: I'm speaking of Mr.
 14 Rancourt, and vice-versa.

15 M. D. RANCOURT: Non.

16 JUSTICE BEAUDOIN: Mr. Rancourt is
 17 saying no.

18 M. D. RANCOURT: Pour des raisons
 19 de coûts.

20 MR. DEARDEN: Why?

21 M. D. RANCOURT: Donc moi je
 22 préfère les amener en personne chez M. Dearden.

23 JUSTICE BEAUDOIN: He wants to
 24 deliver them to you in person.

25 MR. DEARDEN: Or he can... Well,
 26 no, that's fine, I'm just... I'm really

1 speaking... We have been using a process server to
2 serve him at home and still sending it by e-mail,
3 and to avoid the cost of process server, I prefer
4 to e-mail him and courier him a hard copy.

5 JUGE BEAUDOIN: Est-ce que c'est
6 acceptable?

7 M. D. RANCOURT: Donc si je
8 comprends bien, c'est le...

9 JUGE BEAUDOIN: Comme M. Dearden...

10 M. D. RANCOURT: Oui, le même
11 arrangement.

12 JUGE BEAUDOIN: Vous avez indiqué
13 que M. Dearden faisait ça, à un moment donné.

14 M. D. RANCOURT: Oui, absolument.
15 Ça, ça m'est parfaitement acceptable.

16 JUGE BEAUDOIN: O.K.

17 M. D. RANCOURT: Mais je...

18 JUSTICE BEAUDOIN: So service on
19 Mr. Rancourt can be by e-mail and by same-day
20 delivery of documents. So that is for both Mr.
21 Dearden, on behalf of Ms St. Lewis, and on behalf
22 of the University?

23 M. D. RANCOURT: Absolument.

24 JUSTICE BEAUDOIN: So we have the
25 cross-examinations of Mr. Giroux on the 12th or the
26 13th of March, if the motion isn't quashed. We

1 have the cross-examinations on the affidavit to be
2 placed on the 27th and 28th of March, with Ms St.
3 Lewis to be first on the 27th.

4 We have a case conference on March
5 30th, at 9:00 a.m., to review the status of the
6 cross-examinations, to see where we are.

7 So we haven't touched...

8 On n'a pas touché la question des
9 interrogatoires sur la poursuite principale, les
10 interrogatoires au préalable. Donc il faut fixer
11 des dates pour ça.

12 Examinations for discovery in the
13 main action.

14 M. D. RANCOURT: Monsieur le juge,
15 avant de changer de sujet complètement, est-ce que
16 ce serait possible d'avoir l'entente que je puisse
17 servir ce que j'ai à servir par courriel et si on
18 le reçoit et tout est bon, que ça suffit, que je
19 n'ai pas besoin aussi de donner une copie papier?

20 Je sais qu'il y a une asymétrie
21 là, mais il y a aussi une asymétrie dans les
22 ressources, alors je me demandais si... Pour moi,
23 ça m'aiderait beaucoup.

24 JUGE BEAUDOIN: Je ne comprends
25 pas.

26 M. D. RANCOURT: Donc que quand je

1 sers des documents, que par courriel ce soit
2 suffisant, si l'autre...

3 JUSTICE BEAUDOIN: Mr. Rancourt
4 wants to know if he can serve everything by e-mail,
5 including attachments?

6 MR. DOODY: E-mail, and a hard copy
7 by courier the same day is fine.

8 JUSTICE BEAUDOIN: He wants to...
9 He is suggesting he can serve everything by e-mail.

10 MR. DOODY: With the greatest of
11 respect, Your Honour, the difficulty with that is
12 that then, the lawyers don't have the same document
13 that the Court has.

14 My experience is if you serve by
15 e-mail and you print it out and you try to put it
16 together, invariably it doesn't look the same as
17 what the judge is looking at and what counsel is
18 looking at.

19 JUGE BEAUDOIN: Donc vous devrez
20 les apporter personnellement.

21 So before we... I think we need
22 to take a break but before we do discoveries, I
23 understand that before we do that, Mr. Rancourt has
24 a preliminary motion on the affidavit of documents.

25 MR. DEARDEN: Well, he hasn't filed
26 anything, Your Honour, on the affidavit of

1 documents of Joanne St. Lewis, so to me, it's not
2 an issue that's in play in this case conference.

3 JUSTICE BEAUDOIN: Well, I just
4 said...

5 MR. DEARDEN: I have no idea on
6 what he thinks is incomplete. He hasn't served
7 anything.

8 JUSTICE BEAUDOIN: Right. But
9 there's... I'm just saying we need to take a
10 break. I just flagged that. I saw that, that he
11 is taking the position the affidavit of documents
12 is incomplete.

13 All right. So we will call you in
14 about 15 minutes, okay?

15 MR. DEARDEN: Okay.

16 THE REGISTRAR: All rise.

17 MR. DEARDEN: Thank you, Your
18 Honour.

19 THE REGISTRAR: The Court is now in
20 recess.

21 --- RECESS AT 10:47 A.M.

22 --- UPON RESUMPTION AT 11:07 A.M.

23 LA GREFFIÈRE: Veuillez-vous lever
24 s'il vous plaît. All rise.

25 JUSTICE BEAUDOIN: We have Mr.
26 Dearden...

1 LE GREFFIER: Court is reconvened.
2 Please be seated.

3 JUSTICE BEAUDOIN: Mr. Dearden is
4 on the phone? Okay, we'll call him.

5 MR. DEARDEN: Hello.

6 JUSTICE BEAUDOIN: Mr. Dearden,
7 okay, we're back. Justice Beaudoin.

8 There are three matters that need
9 to be dealt with, as far as I know, examinations
10 for discovery.

11 Mr. Rancourt, I saw in his
12 material, indicated that he was taking an issue
13 that your affidavit of documents was incomplete or
14 insufficient and he wanted to do a cross-
15 examination on it.

16 Je suis bien correct sur ce point-
17 là?

18 M. D. RANCOURT: Oui.

19 JUSTICE BEAUDOIN: He confirms
20 that that's correct.

21 So what I thought we would do, the
22 simplest way to do that is fix discovery dates far
23 enough into the future and allow a drop-dead date
24 for him to bring his motion if he's going to do it
25 prior to the examination.

26 M. D. RANCOURT: C'est quoi un

1 « drop-dead date »?

2 JUGE BEAUDOIN: Une date limite.

3 M. D. RANCOURT: Pour amener la
4 motion?

5 JUGE BEAUDOIN: On va fixer la date
6 des interrogatoires.

7 M. D. RANCOURT: H'M.

8 JUGE BEAUDOIN: Et si vous avez
9 l'intention de poursuivre votre motion pour faire
10 ou contre-interroger Me St. Lewis sur son affidavit
11 de documents, vous devrez le faire avant une
12 certaine date.

13 M. D. RANCOURT: Oui.

14 JUGE BEAUDOIN: Parce que c'est
15 trop difficile de préciser exactement.

16 M. D. RANCOURT: Très bien.

17 JUGE BEAUDOIN: Donc on va
18 commencer tout d'abord avec les interrogatoires au
19 préalable.

20 Examinations for discovery, will
21 get some dates in April for Ms St. Lewis and Mr.
22 Rancourt.

23 MR. DEARDEN: I suggest... So the
24 time-table that I've given you, Justice Beaudoin,
25 of February 28 and February 29, and those dates
26 are...

1 JUSTICE BEAUDOIN: They're not
2 going to work.

3 MR. DEARDEN: They're not going to
4 work, so I guess we are speaking April. April 3rd,
5 Joanne St. Lewis, and April 5th for Mr. Rancourt.

6 M. D. RANCOURT: Donc là, on tombe
7 dans le conflit avec mon « arbitration ». Donc par
8 rapport à ce « arbitration », il y a quatre jours
9 pleins de « hearings » la semaine du 9 avril et
10 j'ai une lettre de mon syndicat ici qui explique
11 que j'ai besoin de tant de préparation pour ces
12 choses-là, qui est significatif.

13 JUGE BEAUDOIN: Alors votre
14 disponibilité c'est quand?

15 M. D. RANCOURT: Donc moi,
16 j'aimerais le faire la semaine suivante, c'est-à-
17 dire le 16 avril.

18 JUSTICE BEAUDOIN: 16th of April
19 is the date because of the arbitration that Mr.
20 Rancourt has.

21 MR. DEARDEN: His arbitration ends
22 the 14th.

23 JUSTICE BEAUDOIN: And he's saying
24 he needs to prepare for that. So the 16th or the
25 17th is what he's suggesting, two weeks later.

26 MR. DEARDEN: Your Honour, I'm

1 actually running the Boston Marathon on April 16th.

2 So that whole week of the 16th, I will be out of
3 the office. I'm also speaking at the American Bar
4 Association [inaudible].

5 JUSTICE BEAUDOIN: How about the
6 following week?

7 MR. DEARDEN: Pardon?

8 JUSTICE BEAUDOIN: How about the
9 following week, April 23rd?

10 MR. DEARDEN: April 23, April 24,
11 let me see. Joanne would be available to be
12 examined on April 23 and I'm available on April 23
13 and 24.

14 JUSTICE BEAUDOIN: So the 23 and
15 24?

16 M. D. RANCOURT: Donc non, parce
17 que j'ai un problème avec... D'abord, j'aimerais
18 signaler que je préférerais être examiné en
19 premier.

20 JUGE BEAUDOIN: C'est la partie
21 qu'est signifiée le premier qui procède le premier.

22 M. D. RANCOURT: Non, je
23 préférerais être examiné. Pas examiner, mais être
24 examiné en premier.

25 JUSTICE BEAUDOIN: Mr. Rancourt
26 wants to be examined first, I take it that's not a

1 problem for you, Mr. Dearden?

2 MR. DEARDEN: The problem is Joanne
3 is available on the 23rd. She is not available on
4 the 24th.

5 JUSTICE BEAUDOIN: Ms St. Lewis is
6 not available on the 24th, she's available on the
7 23rd.

8 M. D. RANCOURT: Mais ça fait
9 rien, on peut aller un peu plus tard dans la
10 semaine. Mon point est que j'aimerais être examiné
11 en premier, si c'était possible.

12 JUGE BEAUDOIN: Pourquoi?

13 M. D. RANCOURT: Si c'était
14 possible.

15 JUGE BEAUDOIN: Pourquoi?

16 M. D. RANCOURT: D'abord, c'est
17 rattaché au fait que deux dates qui se suivent, il
18 me semble que je ne sais pas comment physiquement
19 ça peut marcher parce que s'il y a des
20 « refusals », est-ce qu'on ne doit pas faire
21 compléter un examination avant de commencer
22 l'autre?

23 JUGE BEAUDOIN: Non. Lorsqu'on
24 parle de la gestion des causes, on fait autant que
25 possible---

26 M. D. RANCOURT: O.K.

1 JUGE BEAUDOIN: ---avec les dates
2 qu'on a.

3 M. D. RANCOURT: O.K. Donc si je
4 comprends bien...

5 JUGE BEAUDOIN: Donc s'il y a des
6 refus, on continue sur le point prochain.

7 M. D. RANCOURT: H'm.

8 JUGE BEAUDOIN: On continue, on
9 fait tant que possible.

10 M. D. RANCOURT: O.K. Donc on...

11 JUGE BEAUDOIN: On a sept heures
12 d'interrogatoire, hein?

13 M. D. RANCOURT: Oui, mais dans
14 les règles, j'avais compris... D'après les règles,
15 j'avais compris, et j'ai peut-être mal compris mais
16 j'avais compris par rapport à « l'examination » que
17 la partie qui signale en premier examine en premier
18 et qu'ensuite cette partie-là complète complètement
19 son « examination » avant de procéder avec
20 l'autre.

21 JUGE BEAUDOIN: Strictement, c'est
22 à la procédure, mais lorsqu'on traite de la gestion
23 des causes et les nouvelles modalités, on fait tant
24 que possible.

25 M. D. RANCOURT: Est-ce que ça
26 serait possible de demander qu'on fasse un et

1 ensuite l'autre?

2 JUGE BEAUDOIN: On va fixer...

3 Vous avez maximum sept heures chaque.

4 M. D. RANCOURT: Oui.

5 JUGE BEAUDOIN: Ça, c'est prévu

6 dans les règles.

7 M. D. RANCOURT: Oui.

8 JUGE BEAUDOIN: Donc je vous donne

9 chacun un jour.

10 M. D. RANCOURT: Oui.

11 JUGE BEAUDOIN: Et de cette façon,

12 on va faire autant que possible dans chaque chose.

13 M. D. RANCOURT: Oui.

14 JUGE BEAUDOIN: M. Dearden demande

15 que Mme ou Me St. Lewis procède le 23 parce qu'elle

16 n'est pas disponible le 24.

17 M. D. RANCOURT: Oui, je

18 comprends.

19 JUGE BEAUDOIN: Je ne vois aucun

20 avantage de procéder avec ni l'un ou l'autre.

21 M. D. RANCOURT: Euh...

22 JUGE BEAUDOIN: Ordinairement, la

23 personne préfère faire le... J'aurais imaginé que

24 ce serait M. Dearden qu'aurait préféré vous

25 examiner en premier. Il offre son client en

26 premier.

1 M. D. RANCOURT: Je vais être
2 candide avec la Cour, je n'ai jamais fait ça et
3 donc je voulais avoir l'expérience de le subir
4 avant de le pratiquer.

5 C'était ma raison. C'est une
6 question d'expérience et pour moi ça donne un gros
7 avantage. Donc je suis candide, je vous donne la
8 raison.

9 JUSTICE BEAUDOIN: So Mr. Rancourt
10 is saying he's never done an examination for
11 discovery, he wants to see you do it before he does
12 it himself, which is why he wants...

13 MR. DEARDEN: Could you repeat,
14 please?

15 JUSTICE BEAUDOIN: Mr. Rancourt
16 said he's never done an examination for discovery.
17 He would like to see you examine him before he
18 examines Ms St. Lewis.

19 MR. DEARDEN: He's seen me plenty
20 of times.

21 JUSTICE BEAUDOIN: I beg your
22 pardon?

23 MR. DEARDEN: I've cross-examined
24 Mr. Rancourt at the examination for discovery.
25 He's not going to be any different.

26 JUGE BEAUDOIN: Effectivement, ce

1 n'est pas tellement différent, mais...

2 M. D. RANCOURT: Si ce n'est pas
3 tellement différent, dans ce cas-là, je m'objecte
4 parce que ça va être beaucoup trop agressif.

5 JUGE BEAUDOIN: C'est comme ça que
6 ça se fait.

7 M. D. RANCOURT: Je voulais faire
8 ce commentaire.

9 JUGE BEAUDOIN: C'est...

10 M. D. RANCOURT: Mais c'est...

11 JUGE BEAUDOIN: Ce n'est pas...

12 M. D. RANCOURT: Je m'excuse.

13 JUGE BEAUDOIN: Ce n'est pas une
14 fête d'anniversaire là.

15 M. D. RANCOURT: Non.

16 JUGE BEAUDOIN: Comme on dit en
17 anglais: « It's not a tea party. »

18 M. D. RANCOURT: Et donc est-ce
19 que ce serait possible que je passe en premier le
20 24 et que Mme St. Lewis soit le 25.

21 JUSTICE BEAUDOIN: He's asking
22 for...

23 MR. DEARDEN: Ms St. Lewis is also
24 available April 10 and 11, as am I.

25 JUSTICE BEAUDOIN: That's his
26 arbitration.

1 MR. DEARDEN: Okay.

2 JUSTICE BEAUDOIN: That's his

3 arbitration. So he was asking, could Ms St. Lewis

4 go the 24th, but she's not available the 24th.

5 M. D. RANCOURT: Non, elle n'est

6 pas disponible le 23, mais elle est disponible le

7 24.

8 JUSTICE BEAUDOIN: She's available

9 on the 24th?

10 M. D. RANCOURT: Oui, on a déjà

11 confirmé ça.

12 MR. DEARDEN: No.

13 MS J. ST. LEWIS: No.

14 MR. DEARDEN: No. I am, but she's

15 available the 23rd.

16 M. D. RANCOURT: Alors...

17 JUGE BEAUDOIN: O.K.

18 M. D. RANCOURT: Quand est-elle

19 disponible cette semaine-là?

20 JUSTICE BEAUDOIN: When is she

21 available that week?

22 MR. DEARDEN: The week of the 23rd

23 now?

24 JUSTICE BEAUDOIN: Right.

25 MR. DEARDEN: Justice Beaudoin,

26 I'm sorry.

1 JUSTICE BEAUDOIN: Yeah.

2 MR. DEARDEN: She is available 25
3 to 27, but I'm in Winnipeg. I have a [inaudible]
4 conference that I'm speaking at.

5 M. D. RANCOURT: Les trois jours?

6 MR. DEARDEN: So that's why, it's
7 April 23, 24, and I really wouldn't want to go into
8 the next week, but I'm free all of the week of
9 April 30th and May 1, 2, 3, 4. And Joanne is
10 available the 30th, and May 1, 2, 3, from the
11 schedule I have.

12 JUSTICE BEAUDOIN: So we could do
13 her April 30th and Mr. Rancourt, May 1?

14 MR. DEARDEN: Yeah.

15 JUSTICE BEAUDOIN: Okay. So the
16 plaintiff, April 30th. The defendant, May 1.

17 M. D. RANCOURT: Donc, est-ce
18 qu'on peut changer les dates pour que je sois
19 examiner en premier puisque...

20 JUSTICE BEAUDOIN: No, you... Mr.
21 Rancourt, April 30th.

22 M. D. RANCOURT: Oui, c'est ça.

23 JUSTICE BEAUDOIN: And the
24 defendant April 30th, Plaintiff, May 1. Does that
25 work for you, Mr. Dearden? Joanne would be
26 available May 1?

1 MR. DEARDEN: Yeah. According to
2 the schedule I've got here, she is, yes.

3 JUSTICE BEAUDOIN: Okay.

4 L'autre question c'est que vous
5 voulez porter une motion sous la règle pour contre-
6 interroger sur...

7 M. D. RANCOURT: Avant de passer à
8 l'autre question, si je peux demander la chose
9 suivante, sept heures, c'est long et j'ai lu une
10 autorité qui explique que ça n'a pas besoin d'être
11 la même journée.

12 Je me demandais si on pouvait
13 faire deux demi-journées de suite pour aérer un peu
14 la chose pour permettre à ce que je prenne conseil
15 dans la demi-journée, ce genre de chose.

16 J'ai compris que le sept heures,
17 c'était un sept heures cumulatifs. Peut-être qu'on
18 aura pas besoin de plus qu'une demi-journée, je ne
19 le sais pas.

20 JUGE BEAUDOIN: Mais...

21 M. D. RANCOURT: Mais...

22 JUGE BEAUDOIN: On va fixer ces
23 dates-là.

24 M. D. RANCOURT: Oui.

25 JUGE BEAUDOIN: Ce n'est jamais
26 sept heures. Extraordinairement, quand on prend

1 des pauses, c'est entre cinq heures et six heures
2 au max.

3 M. D. RANCOURT: Oui, mais peut-
4 être que j'aurai besoin de sept heures.

5 JUGE BEAUDOIN: Mais moi ce que je
6 propose, on commence tout d'abord avec ces dates-
7 là.

8 M. D. RANCOURT: H'm.

9 JUGE BEAUDOIN: On va toute la
10 journée, c'est-à-dire entre 10 h 00 et on termine
11 environ vers 4 h 00, comme toujours, avec les
12 pauses, l'heure du dîner.

13 Donc c'est une journée tout à fait
14 ordinaire et je propose faire encore une conférence
15 relative à la cause par la suite pour savoir où en
16 est-on? Est-ce que nous avons terminé? Est-ce
17 qu'il y a des refus? Est-ce qu'il y a lieu d'avoir
18 des motions à propos des refus avant de continuer?

19 M. D. RANCOURT: Oui. Alors je
20 prévois un peu d'avance et je pose la question
21 suivante, est-ce que ça serait possible disons,
22 quand je suis en train d'examiner et qu'on a fait
23 disons quelques heures le matin et que c'est à peu
24 près l'heure de la pause du midi, que je dise:
25 « Alors c'est très bien, mais il est survenu des
26 choses. Je veux parler à un avocat. J'aimerais

1 prendre une pause d'au moins une demi-journée,
2 maintenant, faire un temps d'arrêt ici pour revenir
3 demain », par exemple.

4 Est-ce que ce genre de choses là
5 est possible?

6 JUGE BEAUDOIN: Non, on continue.
7 On est préparé.

8 M. D. RANCOURT: Oui.

9 JUGE BEAUDOIN: Il faut se
10 préparer d'avance.

11 M. D. RANCOURT: Oui. D'accord.
12 Alors je voulais poser la question, merci.

13 JUGE BEAUDOIN: Il faut se
14 préparer d'avance, c'est pour ça, hein? Il faut se
15 préparer d'avance.

16 M. D. RANCOURT: Oui, absolument.
17 Oui.

18 JUGE BEAUDOIN: Effectivement, de
19 demander une pause comme ça, si tout le monde
20 faisait ça, il n'y aurait jamais des
21 interrogatoires. Il y a des gens même qui se
22 représentent eux-mêmes.

23 M. D. RANCOURT: Oui, d'accord.

24 JUGE BEAUDOIN: O.K.?

25 M. D. RANCOURT: Alors, j'ai...

26 JUGE BEAUDOIN: Alors on a fixé

1 les dates, le 30 et le 1er mai. On aura une
2 conférence relative à la cause. Encore je propose,
3 si possible...

4 M. D. RANCOURT: Euh...

5 JUGE BEAUDOIN: Ce serait le... Je
6 suis toujours à Ottawa cette semaine, donc le 4 mai
7 à 9 h 00, pour revoir où nous en sommes.

8 Est-ce que bel et bien les
9 interrogatoires ont été terminés? Est-ce qu'il y a
10 des refus? Est-ce qu'il y a lieu de fixer des
11 motions?

12 M. D. RANCOURT: J'ai une petite
13 demande en passant très, très égoïste. Est-ce que
14 c'est possible de commencer un peu plus tard que
15 9 h 00 pour éviter la circulation? Est-ce que
16 c'est...

17 JUGE BEAUDOIN: C'est parce qu'on
18 voit déjà que ça prend énormément de temps, hein?

19 M. D. RANCOURT: D'accord.

20 JUGE BEAUDOIN: Et moi, je veux
21 faire ça effectivement... Parce que moi je
22 devrais, en principe, commencer la cour à 10 h 00.
23 Je fais ça avant que je commence
24 une autre audience alors moi j'ai seulement
25 effectivement entre 9 h 00... Je suis en procès,
26 effectivement.

1 M. D. RANCOURT: Ah! D'accord.

2 JUGE BEAUDOIN: Alors c'est pour
3 ça que c'est 9 h 00.

4 So I'm just saying the case
5 conference is May 4th at 9 a.m., to review the
6 status of the discoveries and to schedule any
7 motions that are necessary.

8 MR. DEARDEN: May 4th.

9 JUSTICE BEAUDOIN: At 9:00 a.m.
10 and Mr. Rancourt was asking if we could start later
11 to avoid traffic, and I was saying to him when I'm
12 doing these case conferences at 9:00, it's because
13 I have to be in court at 10:00.

14 I'm scheduling these because I
15 have an hour and it has to be at 9:00.

16 MR. DOODY: Your Honour, that...

17 MR. DEARDEN: [Inaudible].

18 JUSTICE BEAUDOIN: Go ahead, Mr.
19 Dearden.

20 MR. DEARDEN: I am available May
21 4th for the case conference. The March 30th case
22 conference, I just noticed that I'm not even in
23 town. In fact, I'm not even in the province that
24 day.

25 Can we do that one anytime the
26 week of April 2nd? Because I really want to be

1 physically present because the...

2 JUSTICE BEAUDOIN: That's
3 possible.

4 MR. DEARDEN: This is driving me
5 crazy.

6 JUGE BEAUDOIN: La semaine du 2
7 avril, ça c'est une conférence pour savoir où nous
8 en sommes avec les contre-interrogatoires sur la
9 motion de champartie. On avait proposé le 30 mars.

10 M. D. RANCOURT: Donc le 27 et 28
11 mars, il y a quelque chose, hein? Il y a...

12 JUGE BEAUDOIN: Les
13 interrogatoires.

14 M. D. RANCOURT: Oui, ça c'est en
15 mars. Ça c'est... Oui. Et puis on avait proposé
16 de suivre avec un « case conference » et...

17 JUGE BEAUDOIN: Le 30. M. Dearden
18 dit que maintenant le 30... Il vient de remarquer
19 que le 30 mars ne lui est pas disponible. Il
20 cherche plutôt le 2 avril, la semaine du 2 avril.

21 MR. DOODY: It's fine with me.
22 2nd of April, Mr. Dearden?

23 JUGE BEAUDOIN: Qui est non pas le
24 vendredi, mais le lundi.

25 M. D. RANCOURT: Ça tombe dans la
26 semaine avant mon truc mais c'est au tout début.

1 JUGE BEAUDOIN: C'est une
2 conférence relative à la cause.

3 M. D. RANCOURT: Oui.

4 JUGE BEAUDOIN: Ce n'est pas une
5 audition.

6 M. D. RANCOURT: Oui.

7 JUGE BEAUDOIN: Ce n'est pas une
8 motion.

9 M. D. RANCOURT: Oui.

10 JUSTICE BEAUDOIN: Okay. So we're
11 going to do it April 2nd, at 9:00 a.m., right?

12 M. D. RANCOURT: Donc le 30
13 devient le 2 avril.

14 JUGE BEAUDOIN: Devient le 2.
15 D'autre chose que j'ai noté pour notre...

16 So it's April 2nd at 9:00 a.m.

17 Le 5 mars, s'il y a lieu d'avoir
18 une motion pour radier de la « sommance » en vertu
19 du M. Giroux...

20 So the March 5th motion, you
21 should make it returnable or so soon thereafter
22 simply because we will probably have to do it by
23 phone. I will dial in. You'll come into the
24 courtroom and I will do it by phone.

25 I am technically in Brockville, I
26 do not know if I'm doing a trial or what I'm doing.

1 So as soon as I know what I'm
2 doing in Brockville... But I will hear the motion,
3 if necessary, for the summons, by phone.

4 We can do it here. I will incur
5 the cost of the long distance from Brockville to
6 the courtroom.

7 M. D. RANCOURT: Ça, c'était...

8 JUGE BEAUDOIN: La motion.

9 M. D. RANCOURT: Pour entendre...

10 JUGE BEAUDOIN: S'il y a lieu.

11 M. D. RANCOURT: Pour entendre la
12 motion, s'il y a lieu, oui. Ça, ça va se faire...

13 JUGE BEAUDOIN: C'est le 5 mars.

14 M. D. RANCOURT: Vous allez être
15 par téléphone à cette occasion-là.

16 JUGE BEAUDOIN: Moi, je serai là
17 par téléphone. L'horaire telle qu'elle est prévue,
18 je peux vous assurer M. Rancourt que l'horaire d'un
19 juge, ça change d'un jour à l'autre.

20 M. D. RANCOURT: H'm.

21 JUGE BEAUDOIN: Comme c'est là,
22 c'est prévu que je vais être à Brockville. Ça se
23 peut que c'est pour des fins d'un procès qui
24 pourrait être réglé la semaine précédente, on ne
25 sait jamais, hein?

26 La semaine passée, j'étais sensé

1 d'être à [imperceptible] pour toute la semaine,
2 j'étais là lundi matin et c'était tout. Alors on
3 ne sait jamais.

4 M. D. RANCOURT: On va être avisé
5 de la salle et de l'heure, etc.

6 JUGE BEAUDOIN: On va vous laissez
7 savoir, mais Mme Esterbrokos va être au courant.

8 M. D. RANCOURT: H'm.

9 JUGE BEAUDOIN: Bon. On a fixé
10 des dates pour des interrogatoire sur la poursuite,
11 la requête principale, mais il faut nous fixer une
12 date pour la motion sous la règle 30.06.

13 So we have to fix a date for the
14 motion, the 30.06 motion.

15 M. D. RANCOURT: Je m'excuse, mais
16 je viens de réaliser quelque chose. Moi j'avais
17 prévu que cette motion aurait lieu avant les
18 interrogatoires.

19 JUGE BEAUDOIN: Mais c'est ça.

20 M. D. RANCOURT: Ah, oui!
21 D'accord. O.K. Donc comme on a ces dates-là qui
22 sont loin d'avance...

23 JUGE BEAUDOIN: C'est pour ça...

24 M. D. RANCOURT: Oui, d'accord.

25 JUGE BEAUDOIN: C'est pour ça que
26 j'ai pris des dates---

1 M. D. RANCOURT: Oui, je me
2 souviens maintenant de vos mots.

3 JUGE BEAUDOIN: ---presqu'il y a
4 deux mois là.

5 M. D. RANCOURT: Oui, je m'excuse.
6 Alors, oui, donc je vais juste me situer un peu
7 là. Donc le 30 avril.

8 JUSTICE BEAUDOIN: Ms Semenova,
9 you can probably do that one if Mr. Dearden is not
10 available on the motion on the 30.06, for...

11 Mr. Rancourt in material has
12 indicated that he wants to bring a motion for a
13 cross-examination on the affidavit of documents or
14 for a further and better affidavit of documents
15 under rule 30.06.

16 So he has to, according to the
17 rule, provide any evidence that a relevant document
18 may have been admitted or claim of privilege may
19 have been properly made. I'm not sure what it is,
20 but he has to serve that motion, so...

21 M. D. RANCOURT: Donc le dernier
22 événement avant le 30 avril, c'est quoi déjà là?
23 Comment ça marche?

24 JUGE BEAUDOIN: Mais il y a rien.
25 Le dernier événement, effectivement, c'est les
26 interrogatoires le 27, le 28 mars. Il y aurait une

1 conférence pour revoir l'horaire, qu'est-ce qu'il y
2 eu lieu des interrogatoires, le 2 avril.

3 Donc au début du mois d'avril, on
4 avait proposé des dates, s'il y a lieu, pour un
5 affidavit, pour une motion.

6 So you need a motion date in mid-
7 April, I suppose?

8 MR. DEARDEN: Can that motion not
9 happen sooner than that, Justice Beaudoin?

10 JUSTICE BEAUDOIN: Well, I'm just
11 saying that the week of the 2nd or the 9th of
12 April.

13 M. D. RANCOURT: Les 2 et 9 avril
14 sont pris avec « l'arbitration », et donc ça nous
15 amène à... Puis évidemment, j'ai...

16 MR. DEARDEN: Will this be before
17 you, Justice Beaudoin?

18 JUSTICE BEAUDOIN: Well, if it's
19 going to be me, then it has to be the week before
20 the 23rd of April.

21 MR. DEARDEN: I thought you were
22 looking at the week of April 2nd.

23 JUSTICE BEAUDOIN: But Mr.
24 Rancourt says he's got his arbitration the
25 following week.

26 On ne peut pas le faire le 2, la

1 semaine du 2?

2 M. D. RANCOURT: Bien non, on a
3 une « examination ». Non parce que j'ai besoin...

4 MR. DEARDEN: He has a lawyer
5 representing him in the labour arbitration.
6 [Inaudible].

7 M. D. RANCOURT: On a déjà quelque
8 chose le 2.

9 JUGE BEAUDOIN: Oui. On ne parle
10 pas du 2, ça c'est la conférence---

11 M. D. RANCOURT: Oui.

12 JUGE BEAUDOIN: ---de cause le
13 lundi matin, mais cette semaine, pas...

14 M. D. RANCOURT: J'aimerais avoir
15 un peu plus de temps parce que c'est quand même une
16 motion qui va demander une certaine préparation.
17 J'aimerais... Alors donc, pour me situer un peu
18 plus là...

19 JUGE BEAUDOIN: Non, mais il faut
20 le faire assez tôt pour qu'on puisse conserver, si
21 possible, les dates du 30 avril et 1er mai.

22 Donc il faudrait que ce soit la
23 semaine du 2.

24 M. D. RANCOURT: Mais...

25 JUGE BEAUDOIN: Pas nécessairement
26 le 2, mais ça vous donne déjà deux mois là.

1 M. D. RANCOURT: Deux mois?
 2 JUGE BEAUDOIN: On est rendu le 8
 3 février. On parle---
 4 M. D. RANCOURT: H'm.
 5 JUGE BEAUDOIN: ---de presque deux
 6 mois de préparation.
 7 M. D. RANCOURT: Donc on parle de
 8 la date pour entendre la motion, c'est ça?
 9 JUGE BEAUDOIN: Oui, oui.
 10 M. D. RANCOURT: Parce que...
 11 JUGE BEAUDOIN: La semaine du 2...
 12 M. D. RANCOURT: Pour entendre une
 13 motion, je veux dire, c'est très exigeant et puis
 14 c'est en plein dans ma... On avait déjà établi que
 15 ce bloc-là, je le préservais pour ma préparation
 16 pour le « arbitration ».
 17 JUGE BEAUDOIN: Mais vous avez un
 18 avocat pour ça?
 19 M. D. RANCOURT: C'est une
 20 question de ma préparation, de mes discussions, de
 21 mes rencontres avec cet avocat. Bien sûr j'ai un
 22 avocat, il y a mon syndicat. Là n'est pas la
 23 question. Moi, j'avancerais la semaine du 16 pour
 24 entendre la cause.
 25 JUGE BEAUDOIN: Non, mais moi je ne
 26 suis pas disponible.

1 M. D. RANCOURT: Alors la semaine
2 du 23?

3 JUGE BEAUDOIN: C'est trop
4 rapproché, donc il faudrait le faire le 2 avril.

5 Alors si vous voulez apporter une
6 motion pour une meilleur affidavit, fixez-vous une
7 date là la semaine du 2 avril, trouvez-vous une
8 date qui vous convient.

9 M. D. RANCOURT: Pour?

10 JUGE BEAUDOIN: La motion.

11 M. D. RANCOURT: Pour entendre la
12 motion?

13 JUGE BEAUDOIN: Oui.

14 M. D. RANCOURT: C'est pour ça que
15 j'ai... Pour moi, c'est très exigeant de faire une
16 motion.

17 JUGE BEAUDOIN: Mais on vous donne
18 deux mois---

19 M. D. RANCOURT: Oui, pour la
20 préparation, mais la préparation...

21 JUGE BEAUDOIN: ---de préparation.

22 M. D. RANCOURT: Le stress d'être
23 là dans la salle, la préparation mentale pour être
24 dans la salle, tout ça et les choses de dernière
25 minute, dans mon expérience, c'est très, très
26 exigeant et ça arrive précisément en conflit avec

1 ce truc.

2 D'ailleurs, je ne comprends
3 pourquoi il y a une si grande presse. Je n'ai
4 jamais demandé à l'autre partie de changer une
5 date. Ils ont mis six motions à date.

6 JUGE BEAUDOIN: Mais...

7 M. D. RANCOURT: C'est eux qui ont
8 réglé toutes les dates.

9 JUGE BEAUDOIN: Voilà ce que je
10 vais faire là, si vous ne portez pas de motion---

11 M. D. RANCOURT: Oui.

12 JUGE BEAUDOIN: ---avant le... Je
13 vous donne date limite.

14 M. D. RANCOURT: H'm.

15 JUGE BEAUDOIN: Vous devrez le
16 faire avant le 5 avril, autrement les
17 interrogatoires vont procéder comme prévu parce
18 qu'effectivement, c'est souvent le cas, je vais
19 vous dire.

20 Je vous donne un certain avantage
21 en vous permettant de faire cette motion.

22 La plupart du temps lorsque des
23 gens se plaignent que l'affidavit est insuffisant,
24 ils procèdent aux interrogatoires et puis demandent
25 des documents à ce moment-là.

26 Et comme je m'attends que dans

1 cette cause ici il y aura des refus, j'en suis
2 presqu'assuré, il y aurait des questions qui vont
3 sortir des interrogatoires.

4 S'il y a lieu, les documents qui
5 manquent à ce moment-là, on en traitera par la
6 suite.

7 So I've just explained to Mr.
8 Rancourt that most times, people do not bring a
9 motion, a separate motion, where they are unhappy
10 with the affidavit of documents.

11 They proceed to discoveries. They
12 ask for the documents that they think are missing
13 at that point in time. If there's a refusal, then
14 it's dealt with after the fact, along with any
15 other refusal.

16 It is only where there are key
17 documents and someone says: "I can't proceed with
18 any discovery at all" that the court will order
19 cross-examinations, where they are key documents.

20 And I don't know what that is, I
21 haven't seen the motion, but the Court will say:
22 "Okay. You have to go... You're entitled to do
23 cross-examination" or "you have to produce a better
24 affidavit of documents".

25 So all I'm suggesting to Mr.
26 Rancourt is that if he's going to bring a motion,

1 so that we can keep those discoveries dates, he's
2 got to do it by April 5th.

3 M. D. RANCOURT: C'est-à-dire pour
4 entendre la motion, n'est-ce pas?

5 JUSTICE BEAUDOIN: H'm. You
6 schedule the motion to be heard by April 5th.

7 M. D. RANCOURT: Dans ce cas-là,
8 je voudrais que ce soit plus tôt. Le 2 est déjà
9 pris avec quelque chose.

10 JUGE BEAUDOIN: Ça, c'est à 9 h 00
11 du matin.

12 M. D. RANCOURT: Euh...

13 JUGE BEAUDOIN: Ça c'est une
14 conférence, simplement pour voir---

15 M. D. RANCOURT: Oui.

16 JUGE BEAUDOIN: ---où en sommes-
17 nous contre l'échéancier pour la motion de
18 champartie.

19 M. D. RANCOURT: Alors je propose
20 le 3.

21 JUSTICE BEAUDOIN: Le 3?

22 M. D. RANCOURT: Le 3 avril.

23 JUGE BEAUDOIN: Le 3 avril.

24 So the motion for a better
25 affidavit of documents or to cross-examine is April
26 3rd.

1 Donc vous allez le signifier
2 quand?

3 M. D. RANCOURT: Dans la date
4 limite.

5 JUGE BEAUDOIN: La date. Les
6 quatre jours auparavant?

7 M. D. RANCOURT: Pardon?

8 JUGE BEAUDOIN: Les quatre jours
9 auparavant?

10 M. D. RANCOURT: Oui. Donc je
11 donnerai mon « motion record » quatre jours
12 auparavant.

13 JUGE BEAUDOIN: Mais vous avez dit
14 dans les dates limites, et ordinairement c'est
15 quatre jours.

16 M. D. RANCOURT: Mais quatre
17 jours... Parce que la personne qui soumet,
18 habituellement, est tenue à plus de quatre jours,
19 je crois, dans les règles.

20 JUGE BEAUDOIN: C'est 4 jours.

21 Four clear days, isn't it, for the
22 motion, Notice of Motion, service? Service of the
23 Notice of Motion? It didn't change?

24 MR. DEARDEN: I can't recall.

25 M. D. RANCOURT: O.K. Alors
26 quatre jours. On peut dire quatre jours.

1 JUGE BEAUDOIN: Attendez, je vais
2 voir.

3 MR. DEARDEN: Is Mr. Rancourt
4 accepting your suggestion?

5 JUSTICE BEAUDOIN: He's chosen a
6 date, he's chosen the 3rd of April.

7 MR. DEARDEN: April 3rd?

8 JUSTICE BEAUDOIN: Right.

9 MR. DEARDEN: 9:00 a.m.?

10 JUSTICE BEAUDOIN: No, we're going
11 to put that one at 10:00. I will let the trial
12 coordinator know that I have to have that time set
13 aside.

14 Did they change these? You're
15 right, it's been changed to seven. But is four
16 days going to be enough on this? Because we're
17 just finishing the examinations and cross-
18 examinations.

19 Will you accept service on four
20 days' notice, Mr. Dearden?

21 MR. DEARDEN: Are you asking me,
22 Justice Beaudoin?

23 JUSTICE BEAUDOIN: Yeah, on the
24 motion. It depends, are you confident on your
25 affidavit of documents?

26 MR. DEARDEN: I'm confident on the

1 affidavit of documents. I don't know what he's
2 saying is incomplete. I'm unaware of anything that
3 is incomplete, but he should serve...

4 If he's not taking your suggestion
5 to ask those questions during examination for
6 discovery, he should serve, in my respectful
7 submission, his motion, with his affidavit in
8 support, sometime in the next two weeks.

9 JUSTICE BEAUDOIN: No.

10 MR. DEARDEN: He thinks he knows
11 what's missing, so there shouldn't be any magic in
12 putting together that affidavit.

13 JUGE BEAUDOIN: Pourtant, Monsieur
14 Rancourt, il a raison. Si vous connaissez les
15 lacunes ou les... Autre question de la
16 préparation, mais si vous pouvez identifier les
17 lacunes.

18 M. D. RANCOURT: Donc je m'engage
19 à le faire sept jours d'avance, comme dans les
20 règles.

21 JUGE BEAUDOIN: O.K.

22 He's going to do it seven days
23 before, okay.

24 M. D. RANCOURT: Donc voilà.

25 JUSTICE BEAUDOIN: So the motion
26 will be heard April 30th.

1 S'il y a lieu, vous avez
2 l'intention de poursuivre?

3 M. D. RANCOURT: S'il y a lieu.
4 Je dois consulter, je dois réexaminer les choses
5 j'apprécie les suggestions que vous m'avez données
6 aujourd'hui.

7 JUGE BEAUDOIN: O.K.

8 M. D. RANCOURT: Donc s'il y a
9 lieu, je vais respecter c'est...

10 JUGE BEAUDOIN: Je tiens à vous
11 dire que la plupart du temps...

12 Ce n'est pas moi qui va vous
13 donner des conseils, mais en réalité j'étais
14 protonotaire pendant 12 ans, j'en ai vues très
15 rarement de telles motions.

16 Pour la plupart des avocats, ils
17 se disent que c'est une perte de temps dans le sens
18 qu'ils savent qu'ils vont avoir des
19 interrogatoires.

20 S'il y a des documents qui
21 manquent, ils demandent la production des... Parce
22 que la plupart du temps dans les interrogatoires,
23 il y a des engagements qui se font.

24 M. D. RANCOURT: Donc par exemple
25 si j'étais au courant qu'il manque des documents,
26 je pourrais explicitement les demander quand je

1 signale?

2 JUGE BEAUDOIN: Vous pourriez le
3 faire au préalable. C'est souvent le cas qu'il y
4 aurait une communication informelle entre les
5 avocats pour dire: « Aux interrogatoires, je
6 m'attends à ce que vous auriez ces documents à
7 votre portée ou à la portée de votre témoin. »

8 M. D. RANCOURT: Est-ce que ça
9 serait...

10 JUGE BEAUDOIN: Ça se peut que la
11 personne va dire: « Bien non. D'après nous, il
12 n'y a aucune pertinence. » Mais ça fait partie de,
13 souvent, la question globale des refus.

14 So I was just explaining to Mr.
15 Rancourt that very often, as a Master, I didn't see
16 many motions on an affidavit of documents.

17 The most part indicated to the
18 other side in advance that they thought there was a
19 deficiency in the affidavit, what documents they
20 expected to be produced on discovery or that they
21 would be seeking at discovery.

22 Then the question becomes whether
23 or not the document is relevant or not. That
24 position might be taken at discovery and that the
25 production of that document, along with, perhaps,
26 the refusal of any question, is all dealt with one

1 global summary refusal motion.

2 Because otherwise what you end up
3 with is a refusal motion on the documents, and then
4 you end up with a refusal motion on the questions
5 for examination for discovery.

6 Often they're very related, so you
7 end up with two motions.

8 Comme vous dites que vous êtes
9 seul et que vous n'avez pas les ressources...

10 Je vous donne l'exemple, si vous
11 n'avez pas gains de cause d'une motion, vous serez
12 peut-être condamné à payer les frais à ce moment-
13 là. Donc pourquoi s'exposer?

14 Pourtant, j'essaie de... Je ne
15 peux pas vous donner des conseils, mais le plus de
16 motions, le plus d'occasions d'imposer des frais.

17 M. D. RANCOURT: Oui, je sais.
18 J'en ai eu l'expérience personnelle.

19 JUGE BEAUDOIN: Alors vous le
20 savez, hein?

21 M. D. RANCOURT: Oui. Donc
22 m'encouragez à demander spécifiquement les
23 documents qui d'après moi manquent de façon
24 informelle?

25 JUGE BEAUDOIN: Je peux vous dire
26 que la plupart du temps... Je sais qu'on s'entend

1 mal, ça c'est évident. Mais la plupart du temps,
2 les gens... Il y aurait une communication pour
3 dire: « Moi, je m'attends à ce que... J'ai noté
4 que dans votre affidavit, vous n'avez pas identifié
5 un certain document. »

6 M. D. RANCOURT: D'accord.

7 JUSTICE BEAUDOIN: So I'm just
8 saying to Mr. Rancourt that more often than not,
9 this is done informally. Somebody says: « I notice
10 in your affidavit of documents that you haven't
11 listed a certain number of documents. I expect
12 those to be produced. » There may not be a refusal.

13 Et ça fait partie un peu de la
14 motion mais moi, j'anticipe du moins, vu
15 l'expérience de ce dossier, qu'il y aura
16 certainement des questions...

17 On aura à trancher la pertinence
18 de certaines questions lors des interrogatoires.
19 En même temps, il y aura lieu, à mon avis, de
20 trancher la pertinence de certains documents.

21 M. D. RANCOURT: Est-ce que...

22 JUGE BEAUDOIN: On serait mieux de
23 le faire une fois.

24 I'm just saying to Mr. Rancourt,
25 no doubt there's going to be an issue at the
26 discovery of what questions are relevant.

1 There may be an equal issue as to
2 the relevance of documents. It may be more cost
3 effective to deal with that all at once.

4 M. D. RANCOURT: Est-ce que...

5 JUGE BEAUDOIN: Parce que la règle,
6 c'est clair, encore, M. Rancourt. Lorsqu'une
7 personne dit: « Moi, je prends la position que
8 votre affidavit de documents est déficient et je
9 peux faire preuve que j'ai procédé aux
10 interrogatoires et bel et bien, c'était des
11 documents pertinents qui n'ont pas été divulgués au
12 préalable, à ce moment-là je suis en mesure de
13 demander premièrement d'annuler, que ça ne compte
14 pas dans les sept heures, que j'aie mes frais. Je
15 peux demander un recours envers le Tribunal. »

16 Alors je peux vous dire tout
17 simplement de mon expérience, j'en ai vues moins
18 souvent, mais ça c'est un peu la pratique à Ottawa.

19 M. D. RANCOURT: Oui. Donc juste
20 pour m'assurer d'avoir bien, bien compris, je
21 demande spécifiquement les documents qui d'après
22 moi manquent.

23 Ensuite, si éventuellement ils
24 sont produits et ça démontre qu'effectivement ils
25 manquaient, ça me donne un argument par rapport aux
26 coûts, etc., dans d'une motion éventuelle pour les

1 refus, etc.?

2 JUGE BEAUDOIN: Un peu comme ça.

3 Si vous demandez, si M. Dearden vous les donne,
4 bien la question est tranchée, ce n'est pas
5 nécessaire.

6 S'il refuse et il y aura lieu
7 d'avoir une motion par la suite pour dire: « Je
8 demande toujours... Vous voyez, Monsieur le Juge,
9 j'ai demandé les documents au préalable. On me les
10 a refusés. Aux interrogatoires, j'ai de nouveau
11 demandé ces documents, on me les a refusés. Je
12 vous demande, Monsieur le Juge, Madame la Juge, de
13 trancher la question que ce sont des documents
14 pertinents. Ils ne m'ont pas été donnés au
15 préalable, donc j'ai le droit, je dois refaire mon
16 interrogatoire. »

17 C'est pour ça. Une personne qui
18 refuse un document sur le motif que le document en
19 question n'est pertinent, on court toujours le
20 risque que le Tribunal peut trouver autrement.

21 So I was just explaining to Mr.
22 Rancourt that the normal practice is for a lawyer
23 to ask for documents that they think are missing in
24 the affidavit of documents, and it's up to the
25 responding lawyer to say "yes" or "no".

26 If not, often instead of bringing

1 a motion, they will then proceed to discoveries,
2 ask for the documents again.

3 Again, if there's a refusal, then
4 after discovery they can bring a motion to bring...
5 Then. Because at that point in time, there may be
6 other refusals arising out of the discovery and the
7 Court will deal with them globally.

8 If Mr. Rancourt can establish that
9 he asked for a document beforehand or at the
10 discovery, it was refused and the Court concludes
11 that it was a relevant document and that's an issue
12 that is relevant both to the issue of cost, whether
13 or not to be further discoveries, and any other
14 reliefs that the Court could grant.

15 MR. DEARDEN: So is he now going
16 to accept---

17 JUSTICE BEAUDOIN: Well, he's...

18 MR. DEARDEN: ---that practice?

19 JUSTICE BEAUDOIN: Well, he's got
20 the date of April 3rd, if he's going to do it.
21 I've just given him some sort of...

22 I'm not giving him advice, I'm
23 just telling him what happens for the most part,
24 but he's got the date of April 3rd if he wants to
25 use it, and he will serve it seven days before.

26 The last thing that is on the

1 table, as far as I know, that your request for
2 costs thrown away, and I'm going to ask for...

3 MR. DEARDEN: But there's one
4 other matter, Justice Beaudoin, on discoveries, and
5 that is...

6 If you look at our time-table for
7 the libel action, I have asked Mr. Rancourt to
8 produce me the copies of the documents that he's
9 listed in his affidavit of documents because you
10 gave him our four volumes of affidavit of documents
11 on January 20th, and he refuses to give me those
12 copies.

13 So I'm asking today that you order
14 him to produce the copies of the documents that he
15 has listed in his schedule "A" as we did for him,
16 and we did that for him without cost and it's four
17 volumes of documents.

18 M. D. RANCOURT: Alors si je peux
19 répondre à ça, je n'ai pas refusé. J'ai expliqué
20 que je mettais de l'avant une motion pour arrêter
21 ces examinations avec la motion que je mettais de
22 l'avant.

23 JUGE BEAUDOIN: O.K.

24 M. D. RANCOURT: Donc je n'ai
25 jamais refusé, mais bien sûr que je serais heureux
26 de poursuivre le processus tel qu'il est prévu

1 maintenant que cette motion n'a plus cours en
2 réservant mon droit de faire un appel par rapport à
3 cette décision.

4 Mais j'aimerais aussi signaler à
5 l'autre partie et à la Cour que j'ai aussi
6 l'intention de faire une amélioration de mon
7 affidavit de documents parce que moi, je l'ai
8 soumis il y a très longtemps ce document-là.

9 Il faut comprendre que dans cette
10 affaire, M. Dearden à toujours refusé les
11 découvertes jusqu'à ces derniers instants alors que
12 moi, j'ai toujours demandé des découvertes depuis
13 le début de l'action.

14 Donc mon affidavit de documents
15 est ancien et je vais l'améliorer.

16 JUGE BEAUDOIN: O.K. Vous voulez
17 faire un meilleur affidavit?

18 M. D. RANCOURT: Oui, ce qu'on
19 pourrait appeler en anglais un « update ».

20 JUSTICE BEAUDOIN: Updated
21 affidavit of documents?

22 M. D. RANCOURT: Parce qu'il y a
23 des documents qui sont pertinents maintenant qui
24 sont survenus depuis le moment où moi j'avais, il y
25 a très longtemps, donné mon affidavit de documents.
26 Je pense que ça fait quatre mois ou cinq mois de

1 ça.

2 JUGE BEAUDOIN: Alors vous allez
3 faire quoi?

4 M. D. RANCOURT: Je vais ajouter
5 les documents.

6 JUGE BEAUDOIN: Par quelle date?

7 M. D. RANCOURT: Bien, avant la
8 date qu'on a prévu pour l'examination.

9 JUGE BEAUDOIN: Et vous allez
10 fournir des copies, également, des documents?

11 M. D. RANCOURT: Oui, je peux.

12 JUSTICE BEAUDOIN: So Mr. Rancourt
13 will do an updated affidavit of documents and
14 include copies.

15 Par quelle date?

16 M. D. RANCOURT: Alors, disons,
17 cinq jours avant les "examinations"?

18 JUSTICE BEAUDOIN: Five days
19 before the discovery?

20 MR. DEARDEN: Yeah.

21 JUGE BEAUDOIN: C'est assez tôt.
22 Il faudrait un peu plus d'avance, ordinairement.

23 M. D. RANCOURT: Je peux faire
24 deux semaines.

25 JUSTICE BEAUDOIN: Two weeks
26 before, so it would be the 16th of April.

1 Le 16 avril.

2 MR. DEARDEN: That is
3 unacceptable, Justice Beaudoin, with respect.

4 First of all his affidavit of
5 documents does not have, excuse me... He listed,
6 and I'm just pulling it out here, 33 documents,
7 some of which are...

8 JUGE BEAUDOIN: Est-ce qu'on
9 pourrait avoir les documents...

10 MR. DEARDEN: I...

11 JUSTICE BEAUDOIN: Okay. I'm just
12 going to say, can we have the documents that are
13 listed now? Can we get those right away?

14 M. D. RANCOURT: Le plus tôt
15 possible, avec les contraintes que j'ai déjà
16 expliquées en long et en large. Je m'engage à le
17 faire le plus tôt possible.

18 JUGE BEAUDOIN: Mais les 33?
19 Apparemment que vous avez identifié 33 documents?

20 M. D. RANCOURT: Oui.

21 JUGE BEAUDOIN: Ceux-là, on peut
22 les avoir sous peu, hein?

23 M. D. RANCOURT: Sous peu,
24 aussitôt que possible, avec les contraintes que
25 j'ai expliquées.

26 JUGE BEAUDOIN: Mais est-ce qu'on

1 peut avoir une date pour les documents...

2 M. D. RANCOURT: Donc comme j'ai
3 expliqué... Donc la semaine du 5 mars.

4 JUSTICE BEAUDOIN: He'll have them
5 the week of March 5th. So no later than...

6 M. D. RANCOURT: La fin de la
7 semaine.

8 JUSTICE BEAUDOIN: The 9th of
9 March?

10 M. D. RANCOURT: Voilà!

11 JUSTICE BEAUDOIN: So copies of
12 documents in his current affidavit of documents by
13 March 9th, and he will do an...

14 MR. DEARDEN: Justice Beaudoin?

15 JUSTICE BEAUDOIN: Right.

16 MR. DEARDEN: If I may, why is he
17 allowed? I am strongly opposed to that. He's got
18 them listed. He had his affidavit. He served it
19 last August.

20 I have asked him repeatedly to
21 produce me copies of these documents that he has.
22 He has had ours since January the 20th, and so
23 he'll be able to prepare for Joanne St. Lewis'
24 discovery with my documents, and he's telling me he
25 can't produce his documents before March 9th?

26 He should be producing these

1 documents like this week.

2 JUSTICE BEAUDOIN: Okay, but I'm
3 going to leave it at March 9th, and he's going to
4 do an updated affidavit of documents and any
5 further documents by April 16th.

6 M. D. RANCOURT: Le 16 avril,
7 c'est quand ça? Les « examinations » sont le...

8 JUGE BEAUDOIN: 30. Vous avez dit
9 deux semaines auparavant.

10 M. D. RANCOURT: Oui.

11 JUGE BEAUDOIN: Le 16 avril.

12 M. D. RANCOURT: O.K. Je le note.

13 JUSTICE BEAUDOIN: So that's...

14 The only other thing is cost submissions, costs
15 thrown away.

16 MR. DOODY: Master, just before we
17 leave all the scheduling issues, I wonder, is it
18 possible to fix a time limit on the cross-
19 examination?

20 We've got two days set for the
21 cross-examinations. We've got...

22 JUSTICE BEAUDOIN: I haven't
23 seen... I don't know what the affidavits... I
24 don't know how long it's going to be.

25 MR. DOODY: The difficulty I
26 foresee is if... Counsel may simply have to take

1 the position that questions are being repeated, if
2 that's the case.

3 MR. DEARDEN: I didn't hear, My
4 Lord.

5 JUSTICE BEAUDOIN: Mr. Doody was
6 looking for time limits on the cross-examinations
7 and I'm reluctant to do that, because I don't know
8 what the affidavits are.

9 I'll have to leave in counsels'
10 hands. We are going to be having a follow-up case
11 conference shortly on the 2nd of April to see how
12 it went, and if we need more time, we'll deal with
13 it then.

14 MR. DOODY: Just so Mr. Rancourt
15 understands...

16 MR. DEARDEN: But...

17 MR. DOODY: Just so...

18 MR. DEARDEN: Your Honour, going
19 back to the updated or the supplemental affidavit
20 of documents, April 15th, that includes copies of
21 both documents as well?

22 JUSTICE BEAUDOIN: Yes.

23 MR. DEARDEN: Right?

24 JUSTICE BEAUDOIN: Yeah.

25 MR. DOODY: Just on that last
26 point, Your Honour, just so Mr. Rancourt

1 understands, it doesn't suggest...

2 If we come back here on the point,
3 I will be taking the position that repetitive
4 questions will not be answered.

5 M. D. RANCOURT: Alors là, si je
6 comprends bien, le témoin, M. Giroux, est mon
7 témoin donc c'est une « examination-en-chef », il
8 n'y a pas de raison de se comporter comme si
9 c'était un « cross-examination ».

10 JUGE BEAUDOIN: Lui, il parle des
11 contre-interrogatoires.

12 M. D. RANCOURT: C'est-à-dire il
13 parle de...

14 JUGE BEAUDOIN: Les
15 interrogatoires le 27 et le 28.

16 M. D. RANCOURT: Les
17 interrogatoires sur les affidavits?

18 JUGE BEAUDOIN: Oui, oui.

19 M. D. RANCOURT: À ce moment-là,
20 si je comprends bien, le format est que c'est un
21 « cross-examination » et donc je vais me comporter
22 en conséquence.

23 JUGE BEAUDOIN: H'm.

24 M. D. RANCOURT: Et donc on a
25 l'opportunité...

26 JUGE BEAUDOIN: Mais Me Doody

1 prend tout simplement la position, une position
2 qu'on voit souvent: « La question a déjà été posée
3 et répondue. »

4 M. D. RANCOURT: Oui, il peut
5 faire cette objection-là pendant la procédure.

6 JUGE BEAUDOIN: Ça serait... Oui.

7 M. D. RANCOURT: Il annonce ça
8 d'avance mais moi, je prends la position que s'il
9 pratique ça de façon rigoureuse, que ça ne me
10 permet pas de faire mon travail.

11 JUGE BEAUDOIN: Bien, on verra.
12 On verra si par la suite... Moi, je ne peux pas me
13 prononcer d'avance.

14 M. D. RANCOURT: J'exprime
15 simplement ma position par rapport à la sienne.

16 JUSTICE BEAUDOIN: Okay. So the
17 last thing is a...

18 Monsieur Rancourt, sur vos
19 représentations écrites sur la question des frais
20 qui a été perdus lors de la comparution devant le
21 protonotaires McLeod...

22 J'ai les représentations écrites
23 de M. Dearden et j'ai vu dans votre courriel que
24 vous demandez un temps supplémentaire pour
25 répondre. Deux semaines ça va?

26 M. D. RANCOURT: Non. Permettez-

1 moi de dire quelques mots ici. Je suis fortement
2 de l'opinion qu'il est essentiel d'obtenir, et j'ai
3 déjà commandé d'ailleurs, d'obtenir les
4 « transcripts » de précisément ce qui s'est dit et
5 ce que j'ai dit avant de débattre cette question.

6 JUGE BEAUDOIN: La transcription
7 sera prête quand?

8 M. D. RANCOURT: On m'a informé
9 que ça prend typiquement au moins trois semaines et
10 j'ai commandé, et j'ai preuve à l'appui ici que
11 j'ai commandé le 27 janvier.

12 JUGE BEAUDOIN: Alors vous êtes en
13 mesure de répondre à la question des frais par
14 quelle date?

15 M. D. RANCOURT: Bien, on m'a dit
16 au moins trois semaines, mais ça peut être retardé.
17 Je ne connais pas les statistiques pour avoir ses
18 choses, mais je veux m'assurer qu'on ait en mains
19 précisément ce qui s'est dit avant de débattre ce
20 qui s'est dit. Alors ça, c'est ma première
21 contrainte.

22 Deuxièmement, j'aimerais avoir le
23 temps parce que je n'ai pas eu le temps... Votre
24 Honneur, vous m'avez informé lundi de cette semaine
25 que vous accepteriez que je fasse une contre-
26 représentation à ce document de M. Dearden.

1 Évidemment, je n'ai pas eu le
2 temps de faire ça. J'ai été très occupé.

3 JUGE BEAUDOIN: Je vais vous
4 demander une date. Donnez-moi tout simplement une
5 date.

6 M. D. RANCOURT: Une date, O.K.
7 Pour donc... O.K.

8 JUGE BEAUDOIN: Vos
9 représentations.

10 M. D. RANCOURT: Donc... Bien
11 quand est la prochaine --

12 MR. DEARDEN: Can you repeat, Your
13 Honour?

14 JUSTICE BEAUDOIN: I'm asking Mr.
15 Rancourt for a date for when he will have his
16 submissions with respect to costs thrown away.

17 He has asked for a transcript of
18 the proceedings before Master McLeod. He's saying
19 that that's going to take three weeks.

20 I just want a date, I don't care.
21 I'm not going to hold anything up.

22 M. D. RANCOURT: O.K. Alors
23 donc...

24 MR. DEARDEN: Will this be one in
25 writing?

26 JUSTICE BEAUDOIN: Yeah.

1 MR. DEARDEN: Justice Beaudoin...

2 Yeah. We don't need to appear on this?

3 JUSTICE BEAUDOIN: No, no. I'm

4 just asking him for his responding submissions,

5 that's all.

6 MR. DEARDEN: And then I get a...

7 JUSTICE BEAUDOIN: A reply.

8 MR. DEARDEN: A reply?

9 JUSTICE BEAUDOIN: Yeah.

10 M. D. RANCOURT: Le minimum,

11 minimum de trois semaines, mais je pense que ça va

12 prendre plus de temps parce que...

13 JUGE BEAUDOIN: Donnez-moi une

14 date.

15 M. D. RANCOURT: Parce que c'était

16 en français.

17 JUGE BEAUDOIN: Donnez-moi une

18 date.

19 M. D. RANCOURT: Je ne sais pas

20 leur délai, comment ça peut être, mais il n'y a---

21 JUGE BEAUDOIN: On est rendu à le

22 8.

23 M. D. RANCOURT: ---pas de presse

24 par rapport à cette question-là. Alors les dates

25 qu'on a actuellement, pourquoi pas après...

26 Est-ce qu'on peut le faire dans la

1 fois où on va se rencontrer en « case management »,
2 suite au...
3 JUGE BEAUDOIN: Non.
4 M. D. RANCOURT: Non?
5 JUGE BEAUDOIN: Non.
6 M. D. RANCOURT: Ou...
7 JUGE BEAUDOIN: Ça a pris trois
8 heures ce matin pour faire---
9 M. D. RANCOURT: Est-ce que...
10 JUGE BEAUDOIN: ---un échéancier.
11 M. D. RANCOURT: Est-ce que vous
12 allez prendre cette décision-là dans l'absence de
13 représentations orales?
14 JUGE BEAUDOIN: Oui.
15 M. D. RANCOURT: Vous voulez voir
16 les documents et prendre la décision, c'est ça?
17 JUGE BEAUDOIN: Oui.
18 M. D. RANCOURT: Ah, d'accord.
19 JUGE BEAUDOIN: La question des
20 frais est traitée de cette façon.
21 M. D. RANCOURT: Mais ici, il y a
22 une accusation de mauvaise foi. C'est assez sévère
23 quand même. Bien, j'aimerais le plus de temps
24 possible, mais... Parce qu'il y a pleins de choses
25 qui sont prévues jusqu'à quand? Jusqu'où on est
26 rendu, qu'on a rempli effectivement le calendrier

1 là? Jusqu'où?

2 JUGE BEAUDOIN: Vous, vous faites

3 très peu de choses au mois de février.

4 M. D. RANCOURT: Au mois de...

5 JUGE BEAUDOIN: Vous faites

6 absolument rien au mois de février.

7 M. D. RANCOURT: Oui, moins au mois

8 de février, oui.

9 JUGE BEAUDOIN: Vous n'avez qu'à

10 signifier la « somme » à M. Giroux au mois de

11 février.

12 M. D. RANCOURT: Au mois de

13 février, c'est...

14 JUGE BEAUDOIN: C'est la seule

15 tâche qui vous revient.

16 M. D. RANCOURT: La raison...

17 JUGE BEAUDOIN: Ensuite, il y a la

18 motion le 5 mars, interrogatoires le 12, 13 de M.

19 Giroux, s'il y a lieu, et puis ensuite on ne

20 revient avant le 27, le 28, pour les

21 interrogatoires. Puis là, c'est la fin avril pour

22 les interrogatoires.

23 M. D. RANCOURT: Alors la raison

24 que je fais si peu en février, Monsieur le Juge,

25 c'est que j'ai le IPC et puis j'ai---

26 JUGE BEAUDOIN: Je me demande

1 tout simplement...

2 M. D. RANCOURT: ---une chirurgie,

3 etc.

4 JUGE BEAUDOIN: Donnez-moi une

5 date?

6 M. D. RANCOURT: O.K. Je propose

7 le...

8 JUGE BEAUDOIN: Pour moi, ça ne

9 presse pas. Ce n'est pas la fin du monde.

10 M. D. RANCOURT: D'accord,

11 j'accepte ça.

12 JUGE BEAUDOIN: C'est parce que je

13 dois donner une date de réponse. Je dois donner un

14 minimum de 4 jours à M. Dearden à répondre.

15 M. D. RANCOURT: Mais M. Dearden a

16 déjà fait des soumissions.

17 JUGE BEAUDOIN: Mais il y a une

18 réponse.

19 M. D. RANCOURT: Il a droit à une

20 réponse?

21 JUGE BEAUDOIN: Une réplique, oui.

22 M. D. RANCOURT: Ah, bon! Je n'ai

23 pas noté les dates dans le même calendrier à mesure

24 que je notais ici, mais je pense qu'il n'y a pas de

25 conflit si on disait le 23 avril, mais je ne suis

26 pas certain.

1 JUSTICE BEAUDOIN: Okay. Written
2 submissions on costs thrown away on the 23rd of
3 April, and Mr. Dearden, ten days after?

4 MR. DEARDEN: That works, Your
5 Honour.

6 JUGE BEAUDOIN: O.K. Alors je
7 vais préparer l'échéancier au courant de la
8 journée. J'espère que vous le ferez parvenir dans
9 les deux langues demain au plus tard.

10 I'm going to recap.

11 M. D. RANCOURT: J'aimerais juste
12 demander une chose, cette date du 23 avril
13 présuppose qu'on a en main les « transcripts »
14 complets de cette journée-là.

15 MR. DEARDEN: I do have one other
16 matter, Your Honour, when... Sorry.

17 JUSTICE BEAUDOIN: Yeah, he's just
18 saying the 23rd of April presupposes the
19 transcripts...

20 D'après moi, ça devrait être
21 possible.

22 M. D. RANCOURT: D'après moi aussi,
23 mais je veux juste le noter.

24 JUGE BEAUDOIN: La Cour a une
25 conférence relative à la cause, qui n'a pas pris
26 longtemps, à ma connaissance.

1 M. D. RANCOURT: Je suis d'accord
2 et je veux juste le noter parce que je veux avoir
3 cette assurance-là.

4 JUGE BEAUDOIN: H'm.

5 MS SEMENOVA: Your Honour, we have
6 one other matter. We have a further costs thrown
7 away outlined that we've prepared on the issue of
8 Mr. Rancourt's request for translation of documents
9 that he made on Friday, February the 3rd.

10 He advised us that he will be
11 requesting a translation of all documents filed
12 with the Court after the January 26th conference.

13 And then on February 6th, he
14 advised us that he will not be seeking any such
15 translation, so we've had the costs thrown away for
16 legal research on this issue.

17 We've prepared a submission and
18 also here's a copy of his email requesting these
19 translations.

20 MR. RANCOURT: Do you have a copy
21 for me?

22 MS SEMENOVA: Yes, absolutely.
23 And I also submitted a copy.

24 JUGE BEAUDOIN: Donc ça pourrait
25 être inclus avec vos représentation?

26 M. D. RANCOURT: Bien, je

1 m'objecte à cette chose parce qu'elle m'apparaît,
2 « on the face of it », « vexative ». Je veux dire,
3 j'ai presque immédiatement, quelques jours plus
4 tard, retiré ça.

5 J'étais dans le... Ça, c'était
6 des communications que je faisais pendant que
7 j'apprenais les règles sur le bilinguisme et quand
8 je suis venu...

9 JUGE BEAUDOIN: Effectivement,
10 vous avez tout simplement fait cette représentation
11 par écrit. Vous avez tout simplement dire: « Il
12 n'y a pas lieu d'avoir des frais dans les
13 circonstances. J'avais pris des renseignements
14 quant à mes droits linguistiques---

15 M. D. RANCOURT: Oui.

16 JUGE BEAUDOIN: ---et j'ai annoncé
17 dans les plus brefs délais---

18 M. D. RANCOURT: H'm.

19 JUGE BEAUDOIN: ---mon intention
20 de ne pas faire de demande ». Vous pouvez ajouter
21 en même temps que: « J'aurais pu insister, mais
22 pour faciliter les choses, j'accepte. »

23 M. D. RANCOURT: J'aurais pu
24 insister sur?

25 JUGE BEAUDOIN: Certains points,
26 mais j'accepte que... Même, vous faites vos

1 documents en anglais là.

2 M. D. RANCOURT: Je n'ai pas
3 compris votre dernier point, Monsieur le Juge.

4 JUGE BEAUDOIN: Mais je voulais
5 tout simplement dire, vous allez répondre pour
6 dire: « J'aurais pu peut-être insister que tout
7 soit traduit. »

8 M. D. RANCOURT: Oui.

9 JUGE BEAUDOIN: « Je ne l'insiste
10 plus. »

11 M. D. RANCOURT: Voilà. Voilà.

12 JUGE BEAUDOIN: Vous avez tout
13 simplement à répondre à la question.

14 M. D. RANCOURT: D'accord.

15 JUGE BEAUDOIN: La demande a été...

16 M. D. RANCOURT: Je suis juste un
17 petit peu choqué parce que je ne m'attendais pas à
18 ça à matin. On ne m'a pas...

19 JUGE BEAUDOIN: Je le sais, mais
20 je veux tout simplement vous...

21 M. D. RANCOURT: On ne m'a jamais
22 dit...

23 JUGE BEAUDOIN: Pour moi, c'est
24 très bref.

25 M. D. RANCOURT: Oui.

26 JUGE BEAUDOIN: Ainsi que votre

1 réponse.

2 M. D. RANCOURT: D'accord. H'm.

3 JUSTICE BEAUDOIN: Okay. Recap, if
4 I can.

5 M. D. RANCOURT: Est-ce qu'on a
6 une date pour ces derniers...

7 JUGE BEAUDOIN: Avec le 23. C'est
8 un paragraphe.

9 M. D. RANCOURT: Donc pour le même
10 23, je donne une réponse à cette chose, et cette
11 chose est traitée sur papier uniquement?

12 JUGE BEAUDOIN: Uniquement sur
13 papier.

14 M. D. RANCOURT: D'accord.

15 JUGE BEAUDOIN: C'est seulement
16 dans la mesure que... Ça arrive des fois, et je
17 peux vous prévenir, Monsieur Rancourt, que par la
18 suite des représentations écrites je décide, je ne
19 peux pas trancher la question sans entendre des
20 représentations orales.

21 À ce moment-là, je donne le signal
22 parce qu'il y a des lacunes, soit dans les
23 documents quelconques ou il y a quelque chose que
24 je comprends mal.

25 M. D. RANCOURT: Et j'aimerais
26 clarifier. Est-ce que l'autre partie doit fournir

1 dans cette nouvelle question que je viens
2 d'apprendre aujourd'hui des documents en plus de
3 ceci?

4 JUGE BEAUDOIN: Non, c'est tout.

5 M. D. RANCOURT: Ils auront droit
6 uniquement à ces documents?

7 JUGE BEAUDOIN: Oui, ça c'est
8 l'argumentation.

9 M. D. RANCOURT: Je vais faire une
10 réponse.

11 JUGE BEAUDOIN: Oui.

12 M. D. RANCOURT: Et basé sur ces
13 deux documents uniquement...

14 JUGE BEAUDOIN: Ils peuvent en
15 réplique, tout simplement, répondre à des questions
16 que vous avez soulevées.

17 M. D. RANCOURT: D'accord.

18 JUGE BEAUDOIN: Ils ne peuvent pas
19 apporter des preuves additionnelles qui auraient pu
20 être données ce moment-là, tu sais?

21 M. D. RANCOURT: D'accord. Et si
22 moi, j'ai des problèmes semblables avec des
23 situations, je peux faire la même chose par rapport
24 à des coûts. C'est le même processus.

25 JUGE BEAUDOIN: La question des
26 frais et dépens, la plupart du temps les gens vont

1 le... Souvent, peut-être le... Je ne sais pas,
2 vous avez dit que vous avez déjà une expérience au
3 sujet des frais.

4 M. D. RANCOURT: Oui.

5 JUGE BEAUDOIN: Je ne sais pas si
6 le juge a rendu sa décision sur le champ.

7 M. D. RANCOURT: H'm.

8 JUGE BEAUDOIN: Lorsqu'il y a
9 question de motion, c'est souvent le cas.

10 Effectivement, la règle exige...
11 La règle 57, qui traite des frais et dépens, exige
12 que le Tribunal, autant que possible, se prononce
13 tout de suite.

14 Mais c'est seulement où peut-être
15 le rôle est très chargé, on doit attendre plusieurs
16 motions, on n'a pas le temps d'y penser, et on va
17 demander: « Donnez-moi des représentations
18 écrites, je vais décider plus tard. »

19 C'est surtout le cas où on prend
20 une décision en délibéré, mais ça dépend du juge,
21 ça dépend des circonstances.

22 I'm going to review the champarty
23 motion. I indicated that the University of Ottawa
24 did not need leave to intervene pursuant to rule
25 37.07(1).

26 They had to be served because they

1 were a party affected by the order. Mr. Doody
2 accepted service on behalf of the University and so
3 there's no issue of service.

4 Donc le dossier de motion de
5 champartie a été signifié à l'Université. Il n'y a
6 pas lieu d'apporter une motion de la part de
7 l'Université à intervenir parce que c'est prévu
8 selon la règle 37.

9 Monsieur Rancourt a cherché à
10 remettre la poursuite de Mme St. Lewis en attendant
11 l'audition de la motion qui traite de champartie,
12 et j'ai refusé.

13 À mon avis, ce sont deux
14 indépendants. C'est des éléments indépendants.
15 Même s'il y a lieu d'annuler l'entente entre
16 l'université et Mme St. Lewis, Mme St. Lewis peut
17 bel et bien continuer avec sa poursuite, si elle le
18 veut, contre M. Rancourt, sans l'appui de
19 l'Université. Quand à cette motion, les défendeurs
20 vont répondre le 21 février.

21 Également, en même temps, M.
22 Rancourt a indiqué qu'il voulait apporter une
23 motion pour permettre les membres du publics pour
24 assister ou même des médias d'assister aux
25 interrogatoires, aux contre-interrogatoires, sur le
26 principe de « open court ».

1 J'ai refusé d'annuler ou de
2 retarder les motions, les interrogatoires pour ces
3 motifs-là et j'adopte le raisonnement, les motifs
4 du protonotaire McLeod.

5 M. Rancourt a signalé son
6 intention d'interroger comme témoin, M. Robert
7 Giroux, qui est le président du Conseil
8 d'administration de l'université.

9 En vertu de sa motion, j'ai
10 indiqué qu'il devrait le signifier avec ce subpoena
11 au plus tard le 13 février 2012 pour un examen qui
12 aura lieu le 5 mars.

13 S'il y a lieu, l'Université, de la
14 part de M. Giroux, va amener sa motion pour annuler
15 le subpoena le 5 mars qui aura lieu à 10 h 00 ce
16 jour-là ou à l'heure qui pourrait être prévue parce
17 que ça serait par téléphone. Je m'attends être à
18 Brockville ce jour-là.

19 Cette motion-là sera signifiée à
20 M. Rancourt le 27 février 2012 par courriel, et par
21 courrier le même jour à son adresse.

22 Effectivement, la défenderesse,
23 Mme St. Lewis, peut lui signifier de la même façon.

24 Les contre-interrogatoires sur les
25 affidavits auront lieu les 27 et 28 mars. Mme St.
26 Lewis va procéder la première le 27 mars.

1 L'examen comme témoin de M.
2 Giroux, s'il y a lieu, aura lieu le 12 ou le 13
3 mars, et ça c'est toujours sujet à la disponibilité
4 de M. Giroux.

5 Il y aura une conférence relative
6 à la cause le 2 avril pour revoir où nous en sommes
7 à propos de cet échéancier, s'il y a lieu d'avoir
8 des motions, s'il y a des refus, où est-ce qu'on
9 peut fixer la date de l'audition de la motion de
10 champartie.

11 Les interrogatoires dans la
12 poursuite principale, dans la requête de libelle
13 diffamatoire, les interrogatoires au préalable
14 auront lieu le 30 avril et le 1er mai.

15 C'est M. Rancourt qui sera examiné
16 le 30 avril et Mme St. Lewis le 1er mai.

17 Il y aura une conférence relative
18 à la cause le 4 mai à 9 h 00 du matin pour revoir
19 l'échéancier pour savoir où nous en sommes et pour
20 fixer des dates pour les motions, s'il y a lieu,
21 les problèmes qui ont eu lieu lors des
22 interrogatoires.

23 M. D. RANCOURT: Excusez-moi,
24 Monsieur le Juge. Le 30 et le 1er, vous avez bien
25 dit, si je comprends, que le 30 avril...

26 JUGE BEAUDOIN: C'est vous.

1 M. D. RANCOURT: Je suis examiné?

2 JUGE BEAUDOIN: Oui.

3 M. D. RANCOURT: Par l'autre
4 partie. Très bien.

5 JUGE BEAUDOIN: M. Rancourt a
6 indiqué qu'il y aurait possibilité qu'il amène une
7 motion sous la règle 30.06 pour avoir un meilleur
8 affidavit de documents de la part de la
9 demanderesse ou pour la contre-interroger.

10 Il va fixer cette motion ou il
11 devrait faire cette motion le 3 avril à 10 h 00, et
12 il devrait signifier cette motion, comme prévu dans
13 la règle, un minimum de sept jours auparavant.

14 Il doit fournir des copies des
15 documents qui sont présentement énumérés à son
16 affidavit de documents le 9 mars 2012 et il doit
17 signifier un affidavit supplémentaire. ainsi que
18 les copies de tout nouveau document, le 16 avril.

19 Quant aux représentations écrites
20 de la part de M. Rancourt à la demande des frais
21 qu'ont été perdus de la part de Mme St. Lewis à
22 propos de la conférence relative à la cause devant
23 le protonotaire McLeod, ainsi que la demande de
24 traduction de documents de la part de M. Rancourt,
25 il doit répondre au plus tard le 23 avril 2012. La
26 demanderesse a dix jours, par la suite, d'y

1 répondre, à ses représentations.

2 Donc c'est compris? Il y aura cet
3 échéancier qui sera publié plus tard.

4 M. D. RANCOURT: Mais est-ce que
5 vos décisions d'aujourd'hui que vous avez décrites,
6 est-ce que vous allez nous les donner en écrit?

7 JUGE BEAUDOIN: Oui.

8 M. D. RANCOURT: O.K. Puis il y a
9 une clarification...

10 MR. DEARDEN: Your Honour?

11 JUSTICE BEAUDOIN: Yes. Mr.
12 Rancourt...

13 MR. DEARDEN: Yes, that's...

14 JUSTICE BEAUDOIN: What's that?

15 MR. DEARDEN: I had one quick
16 additional request, that the Court issue an order
17 under section 11 of the Bilingual Proceedings
18 Regulations, which states that unless the Court
19 orders otherwise, interpretation shall not be
20 included in any transcript of oral evidence.

21 I would request that you make that
22 order today so that the cross-examination
23 transcripts and ultimately the examination for
24 discovery transcripts where there will be
25 interpretation, will have included in the
26 transcripts the interpretation pursuant to this

1 section.

2 JUSTICE BEAUDOIN: Sorry, you want
3 that the translation not appear in the transcript?

4 MR. DOODY: That it appear.

5 JUSTICE BEAUDOIN: That it appear.

6 MR. DEARDEN: We need an order to
7 get it included. To get the translation included
8 in the transcript, you need an order under section
9 11---

10 JUSTICE BEAUDOIN: Okay.

11 MR. DEARDEN: ---of the Bilingual
12 Proceedings Regulations.

13 JUGE BEAUDOIN: Est-ce que vous
14 vous opposez?

15 MR. DEARDEN: And I very much need
16 the interpretation or the translation to be
17 included in the transcript.

18 M. D. RANCOURT: Donc, je...

19 MR. DEARDEN: I asked Mr. Rancourt
20 if he would consent to this, and he hasn't given
21 his position yet.

22 M. D. RANCOURT: Donc la première
23 fois qu'on m'a demandé ça c'est hier et puis j'ai
24 dit que j'étudiais la question, mais je n'ai pas eu
25 le temps vraiment.

26 Mais si... Avec ma compréhension

1 limitée aujourd'hui, je peux répondre la chose
2 suivante.

3 D'abord, j'aimerais pouvoir
4 répondre plus tard quand j'ai vraiment parlé à un
5 avocat, parce que je n'ai pas parlé à un avocat.
6 Ça, c'est la première chose.

7 J'aimerais de pouvoir répondre à
8 votre question plus tard, pas aujourd'hui.

9 Mais moi je ne m'oppose pas
10 évidemment à ce que M. Dearden ait une traduction,
11 mais je m'oppose à contourner, c'est-à-dire à
12 modifier les règles telles qu'elles sont prévues
13 parce que si je comprends bien, ça voudrait dire
14 que le document légal officiel de ce qui a été dit
15 inclurait la traduction et j'ai un problème avec ça
16 parce que, moi, je voudrais que les mots que j'ai
17 prononcés soit la version légale.

18 JUGE BEAUDOIN: Les deux seront
19 là.

20 M. D. RANCOURT: Oui, les deux
21 seront là, mais je ne voudrais pas qu'on soit dans
22 une situation où il y a un conflit à savoir lequel
23 est le plus proche de ce qu'a été dit. Je voudrais
24 que ce soit très clair.

25 JUGE BEAUDOIN: L'option serait
26 juste bilingue et puis on noterait la différence

1 entre les deux.

2 M. D. RANCOURT: Mais ce que je
3 veux dire c'est que dans un cas, ce serait les mots
4 du traducteur et dans l'autre cas, ce serait mes
5 mots.

6 Donc je ne voudrais pas avoir à
7 débattre que mes mots sont plus précisément ce que
8 je voulais dire que les mots du traducteur. Je ne
9 veux pas être mis dans cette situation.

10 JUGE BEAUDOIN: Mais c'est
11 toujours le cas lorsqu'il y a une traduction.

12 M. D. RANCOURT: Mais ça n'a pas
13 besoin d'être le cas dans un document officiel.

14 Cette traduction que M. Dearden
15 souhaite avoir, ça peut être mis dans un document
16 pour son utilisation qui sont produits de la façon
17 qu'il veut bien la produire, mais les règles, je
18 pense, ont été prévues explicitement pour inclure,
19 pour être faites de la façon qu'elles sont prévues
20 pour la bonne raison, je pense... Et je n'ai pas
21 pu consulter un avocat, mais je pense, que c'est
22 cette question à savoir quelle version...

23 Je sais parce que je viens de
24 l'Université d'Ottawa et on a toujours ce débat-là:
25 « Quelle version est la bonne version? »

26 Dans ce cas-ci, il y a les mots

1 que j'ai dit et il y a les mots d'un traducteur et
2 je ne veux pas qu'ils soient mis sur le même pied
3 d'égalité. Je veux pouvoir...

4 JUGE BEAUDOIN: La traduction ne
5 veut pas dire qu'ils sont mis sur le même pied
6 d'égalité. Ça veut tout simplement dire que la
7 transcription démontre les deux.

8 M. D. RANCOURT: Donc, est-ce que
9 je peux avoir un...

10 JUSTICE BEAUDOIN: Mr. Rancourt is
11 saying... And I have to say, this issue is coming
12 up late and after a three and a half hour case
13 conference, he wants some time to respond to that
14 issue.

15 The transcripts aren't going to be
16 prepared until... Can we deal with that on the
17 May...April 2nd issue? Because the transcripts
18 won't be prepared by then, right?

19 MR. DOODY: Well, the transcripts
20 will be... I believe that you need to... I
21 believe you need...

22 MR. DEARDEN: Sorry. So
23 indirectly, Your Honour, Mr. Rancourt is not
24 consenting to an order under section 11 of those
25 dates?

26 JUSTICE BEAUDOIN: He's indicating

1 he wants some time to think about it, and I don't
2 even know what you're referring to, so...

3 MR. DOODY: I...

4 MR. DEARDEN: There...

5 JUSTICE BEAUDOIN: I'm hearing
6 this for the first time.

7 MR. DOODY: And I'm not taking a
8 position on it, but I believe that the reporter's
9 office may need to know, because it may influence
10 who does the reporting.

11 I don't think it probably would,
12 because both French and English will be required.
13 So as long as the transcripts are not ordered until
14 after you decide the problem...

15 JUSTICE BEAUDOIN: We can deal
16 with that on April 2nd, okay? Okay?

17 MR. DEARDEN: Yes, Your Honour.
18 Thanks.

19 JUSTICE BEAUDOIN: All right. All
20 right? I will write this up.

21 M. D. RANCOURT: Avant que vous
22 partiez pour écrire ça, j'ai juste une petite
23 précision par rapport à ce que vous avez dit que
24 vous allez mettre dans votre écrit.

25 J'aimerais, si c'est possible...
26 Si j'ai bien compris, vous avez explicitement

1 refusé que je puisse déposer ma motion par rapport
2 à la cour ouverte?

3 JUGE BEAUDOIN: H'm.

4 M. D. RANCOURT: Donc j'aimerais
5 que ça apparaisse dans le...

6 JUGE BEAUDOIN: Oui, oui.

7 M. D. RANCOURT: Dans la règle.

8 JUGE BEAUDOIN: O.K.

9 M. D. RANCOURT: Parce que la
10 façon que vous l'avez lu, ce n'était pas---

11 JUGE BEAUDOIN: H'm.

12 M. D. RANCOURT: ---explicite.

13 JUGE BEAUDOIN: C'est tout.

14 M. D. RANCOURT: Et donc votre...

15 JUGE BEAUDOIN: L'échéancier sera
16 publié d'ici demain, au plus tard. O.K.?

17 M. D. RANCOURT: Merci.

18 STÉNOGRAPHE: Veuillez vous lever,
19 s'il vous plaît. All rise.

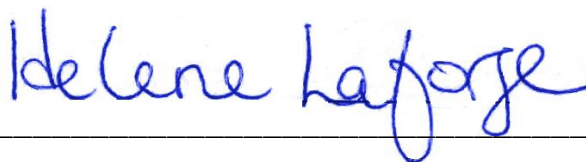
20 LE GREFFIER: Cette audience est
21 maintenant levée.

22 --- FIN DE L'AUDIENCE À 12:22 P.M.

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately transcribed the
foregoing proceeding.

/

Je déclare sous mon serment d'office que les pages
qui précèdent contiennent la transcription exacte,
le tout conformément à la loi.



Hélène Laforge, s.o.

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

V.

DENIS RANCOURT

P R O C E E D I N G S

HEARD BEFORE THE HONOURABLE MR. JUSTICE R. SMITH
on Wednesday, March 28, 2012 at OTTAWA, Ontario

APPEARANCES:

Dearden, Mr.

Doody, Mr.

D. Rancourt, Mr.

Counsel for Ms. St. Lewis

Counsel for the University of Ottawa

Self Represented

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Transcript Ordered:	May 10, 2012
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Ordering Party Notified:	July 13, 2012

1.
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WEDNESDAY, MARCH 28, 2012

5 THE COURT: We've got the interpreters. Everyone is hooked up?

REGISTRAR OF THE COURT: Yes, they need to be affirmed or sworn in.

10 LE TRIBUNAL: Tout le monde est heureux? On procède d'abord. So we'll proceed.

MR. DEARDEN: So Your Honour that was just a preliminary matter - I handed up to Your Honour an outline of argument regarding or opposing the intervention of Mr. Hickey.

15 THE COURT: Yes, we'll deal with Mr. Hickey's matter first.

M. RANCOURT: Oui.

LE TRIBUNAL: On va faire ça premièrement.

20 M. RANCOURT: Merci, Votre Honneur. Pour clarifier, Monsieur le Juge, dans quel ordre vont se faire les présentations?

THE COURT: Premièrement - objection par monsieur - maître Dearden and then I'll hear Mr. Hickey.

25 MR. DEARDEN: Your Honour, if you turn to tab four - and all I'm doing here is just making the suggestion, tab four of my outline that I handed up, so it's - it should be a little blue - no, it's a green one, Your Honour. It's thin. Make sure it says Opposing the Intervention of Joseph Hickey. This is a letter - you should have a letter of March 27th, Your Honour from myself to Jackie Lowe, the acting trial coordinator. I'm requesting that you

30

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5 deal with two preliminary issues and you'll see that
in paragraph two of the letter, and that is whether
Mr. Hickey's motion record and factum are improperly
before the Court in that Mr. Hickey has not served a
notice of motion, which in my submission he's
supposed to do pursuant to rule 13.01(1) and then
secondly, whether Mr. Hickey's motion record and
factum are improperly before the Court in that these
documents were only delivered on March 22nd instead
10 of March 19th, which the rules would have required.
So if Your Honour is desirous of dealing with those
preliminary issues, I'm in your hands as to who you
want to start arguing those two issues.

15 THE COURT: No, I think what I will do - I've heard
you, but I think I'll hear Mr. Hickey, hear his
arguments, let you respond, reply and - so Mr.
Hickey, you've heard those - those objections, but
you have no motion, is that right?

20 MR. HICKEY: That's right, Your Honour. My
understanding....

THE COURT: It's called a motion record I guess - you
have a motion.

MR. HICKEY: I had submitted an affidavit.

THE COURT: Just an affidavit.

25 MR. HICKEY: In the motion record, yes.

THE COURT: There would be another way to do this, is
if you are supporting the - Mr. Rancourt, you could
file an affidavit in his materials and be a witness,
that would be - you could then participate....

30 MR. HICKEY: Your Honour, if I may - I have - I
desire to intervene as a member of the public...

THE COURT: Okay.

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MR. HICKEY: ...and as a member of the media.

THE COURT: Okay.

MR. HICKEY: And that gives me a unique perspective....

THE COURT: Just so we're clear, members of the public and the media do not get intervenor status in a private dispute between various individuals. There are rules governing intervenor status. I don't see any case law that you have provided.

MR. HICKEY: I mean my sole interest and concern is in arguing to secure access for public observation about Court examinations of affiants and witnesses. I post-intervened to defend my Charter rights as a member of the public and - and of the media, and my understanding of Justice Beaudoin's order of February 8th, which I was present to hear in person, is that as long as a person is an affected party to an order before the Court....

THE COURT: So everybody can participate in any Court case, is that the - the end result of what you're suggesting?

MR. HICKEY: If I may....

THE COURT: Would that make any sense? It will be unmanageable for the Court system to hear private disputes that involve everybody. The public is everybody.

MR. HICKEY: May I read a brief quote from Justice Beaudoin?

THE COURT: No. No, no, I think the test - let me tell you the test that you must meet, and actually it's a recent Court of Appeal - actually, the decision came out yesterday, which has summarised -

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and I'm just reviewing your material, the - they quote from Justice Dubbin [ph] in a Peel decision and the lawyers are perhaps aware of it, although I did not see these specifically:

"So the matter to be considered are of the nature of the case, the issues which arise and the likelihood of the applicant person applying to be an intervener, being able to make a useful contribution to the resolution of the dispute."

In this case it was an appeal.

"Without causing injustice to the immediate parties."

So does the applicant have an important interest or perspective distinct from the parties otherwise not available to the Court. So that is the - I think general summary of the test for an intervener.

Generally they would be associations, civil liberties association, that's the case here, that would have an interest to advance a different point of view than the parties. But here I see that your interest is exactly the same as Mr. Rancourt's.

M. RANCOURT: Sur ce point, Monsieur le Juge...

LE TRIBUNAL: Non, non. Attends. Attends. Non, non. Non, non.

M. RANCOURT: D'accord.

LE TRIBUNAL: Vous aurez votre chance.

MR. HICKEY: May I respond?

THE COURT: Yes.

MR. HICKEY: Yes.

THE COURT: So that's the test to meet.

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MR. HICKEY: Okay.

THE COURT: Okay.

MR. HICKEY: The test I understand is a part of rule 13.01.

THE COURT: No.

MR. HICKEY: No. Which would be a motion to intervene, that's not the....

THE COURT: Well, yes, a motion to intervene, that's right.

MR. HICKEY: Right, right. Rule 13.01 was the rule about the motion to intervene.

THE COURT: Correct, that's the test.

MR. HICKEY: And I - I understand that there's three - three issues needed there or three disjunctive tests actually. And that the intervener's useful contribution is a factor that needs to be considered. And I - I do believe that I have a useful contribution that is unique, that unlike the other parties, I am a part of the public.

THE COURT: The parties - well, the party - you are simply saying you want to be present, is that right? Do you have a position?

MR. HICKEY: I - my sole interest is public access....

THE COURT: Just to be present?

MR. HICKEY: For the out of Court examinations. I do not intend to argue the champerty motion or present any material on any of the other actions in the case - any other matters in the action.

THE COURT: But isn't Mr. Rancourt also seeking public - that's what's in his material. He's

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seeking the same thing. So you're supporting his position?

MR. HICKEY: Mr. Ran - the present motion is a leave for appeal of the order barring the defendant's open Court motion for being heard on its merits and I, as a member of the public, am affected in my Charter rights by any order that....

THE COURT: But my point is that your position is the same as Mr. Rancourt's.

MR. HICKEY: My position is that....

THE COURT: He wants the public to be present - be able to be present, that's what he's asked in his materials.

MR. HICKEY: In the open Court motion?

THE COURT: You're - yes. You're agreeing with him?

MR. HICKEY: I do agree with the open Court motion.

THE COURT: So you're supporting him?

MR. HICKEY: My understanding is that today it's a motion for leave to appeal.

THE COURT: That's correct. But you're seeking intervener status, your motion is not leave to appeal, you're seeking intervener status.

MR. HICKEY: I'm seeking intervener status on the instant motion for leave to appeal.

THE COURT: Correct.

MR. HICKEY: Because any - any discretion of judicial decision that affects the openness of Court processes can't be taken lightly and which has been established in a consecutive series of Supreme Court decisions. And so I have a unique perspective as a member of the public and as a member of the media who is defending his Charter rights. And beyond my

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5 unique perspective, I also have original evidence
and arguments to submit that speak to the general
and public importance of the defendant's barred open
Court motion and to the gravity of the decision by
Justice Beaudoin to bar this motion from being heard
on its merits. And Your Honour I....

THE COURT: Your unique - and your unique perspective
is what?

10 MR. HICKEY: As a member of the public and the media
defending his Charter rights.

THE COURT: So that every member of the public has
the same right then?

15 MR. HICKEY: In particular I'm affected in a special
case, Your Honour, in that I have already attended
out of Court examinations.

THE COURT: So every member of the public would be
equally affected, is that your position?

MR. HICKEY: My position is that I'm affected....

20 THE COURT: You're representing the members of the
public.

MR. HICKEY: I'm representing myself as a member of
the public. I have attended out of Court
examinations and I have reported on - via my blog,
which I do as a member of governance at the
25 University of Ottawa as a student representative to
the senate.

THE COURT: No, but your interest on this case is the
same as the public?

30 MR. HICKEY: The interests are the same, but I'm
affected especially because I already have....

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THE COURT: You have no unique interest – you seek to represent the public at large, is that – that’s who you seek to represent?

MR. HICKEY: Well, I am defending my Charter rights to freedom of expression under the open Court principle.

THE COURT: So you’re defending your own rights, not the public’s?

MR. HICKEY: Well, I see the Charter argument as....

THE COURT: Your Charter rights is what you’re seeking intervention status for?

MR. HICKEY: I – I am seeking intervention status to defend my Charter rights, yes.

THE COURT: Okay. So the – your rights, not the public’s rights? Your rights as a member of the public?

MR. HICKEY: Right. And as a member of the media.

THE COURT: Okay. Thank you. Response?

MR. DEARDEN: Your Honour, just as an immediate response, you’ll note on Mr. Hickey’s motion record, because you kept on asking him “You’re here to support the defendant’s motion?” that’s exactly what he says in his motion record in support of the defendant’s motion for leave to appeal, that’s what he’s doing.

THE COURT: Where does he say that?

MR. DEARDEN: Right on his motion record, it should be a blue book, Your Honour. Motion record, it’s on the cover in round brackets under Motion Record (in support of the defendant’s motion for leave to appeal). And he brings nothing unique, in my respectful submission, Your Honour, to the leave to

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5
10
appeal application. His interest is exactly the same as every member of the public. If he is right, then over 10,000 students at U of O could show up here and say "I have a right to intervene in any motion that's brought in this case by Professor St. Lewis against Mr. Rancourt." And that just cannot be so. He hasn't demonstrated, Your Honour, an actual interest that can be distinguished from that of general public interest. He's got no factual interest in the dispute between the parties in this liable action. He's no different than any other member of the public.

15
Now, Your Honour, in my outline of argument - if you open it up, please. I've set out our arguments about the fact that Mr. Hickey should have served and filed a notice of motion, which he has not done. The rule that you see - that I've set out in paragraph one of the outline says....

20
25
THE COURT: I grant you that's a technical argument, you're legally correct, but he's a self-represented party, I probably would not dismiss him on that - I think it's an attempt at a motion really. No, no, thank you - you'll get a reply, that's what I think - well, technically correct - this document is seeking leave - is a request in the simple - simple form.

30
MR. DEARDEN: I hear you, Your Honour, I'll move to the next point and you may be telling me the same thing, which of course is time limits.

THE COURT: Yes, same thing.

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MR. DEARDEN: Same thing. Does Your Honour want me to deal with what....

THE COURT: There's - if there's anything - you know, you've seen from my comments - I'm questioning whether there's any unique interest that he would bring - these things, as you know, are usually civil liberties associations, generally organizations representing a group of affected individuals, whether they be - that have a unique interest that may not be addressed by the Courts in hearing the matter, those are - those are - it's my understanding that the types of cases where intervenor status is granted for example, the common law students at the University were granted intervenor status in a Law Society disciplinary appeal to the Divisional Court dealing with language rights. They had a common law - this is a reported case and actually I granted the intervenor status on that particular case because of a unique interest that they had in discipline for Francophone lawyers. So - so anyway, that was the nature of my questioning, it's the legal test that has to be applied, so - so I think that's the ground on which I'm going to rule whether he meets that test and your position is there is no unique interest and that - I think he's largely agreed with that, that it's not a public interest frankly, it's his own individual Charter is the ultimate answer.

MR. DEARDEN: Which is again no different than any other member of the public showing up and saying that I have a section 2B Charter right to - which - or he wants to argue that he does and it's no

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different. So there's no uniqueness whatsoever. So let me address one last thing then, Your Honour, in terms of the test in rule 13.01 or 13.02, which is the (c) test, 13.01(c) says that you can't cause undue delay. An intervention can't cause any delay or prejudice. So let's - what we're going through today is causing an undue delay. But you can't cause prejudice. Your Honour, Mr. Hickey submitted to you he was affected because he had showed up at a cross-examination and yes indeed, he did, in this proceeding on September the 6th of 2011, which was why Master Beaudoin issued his October 6th, 2011 order. Mr. Hickey and two other members - supporters of Mr. Rancourt showed up....

MR. HICKEY: Your Honour, I have an objection with respect. This is....

MR. DEARDEN: Sorry.

MR. HICKEY: I object to repeatedly being labelled a supporter of the defendant.

THE COURT: No, you'll get a chance to reply.

MR. HICKEY: This is an objection on this specific point.

THE COURT: To a statement that he's made?

MR. HICKEY: Yes, that it's prejudicial against me and just because I hold views that Mr. Dearden may not agree with, does not mean that I'm a supporter of the defendant.

THE COURT: Well, you filed that you're supporting his motion in your material.

MR. HICKEY: On this motion for leave to intervene, that's correct.

THE COURT: Which is all I'm dealing with today.

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MR. HICKEY: Mr. Dearden has repeatedly called me a supporter of the defendant in the action, I take issue with that and I object to that.

THE COURT: Okay.

MR. DEARDEN: Your Honour, going back to 13.01(c), it references - or 2 - sub (2) rather talks about:

"The Court shall consider whether the intervention will unduly delay or prejudice the determinative...rights of the parties to be proceeding."

And as I was saying to you before Mr. Hickey stood up there, he did attend September 6th cross-examination, in my submission, it was an improper attendance, I had warned Mr. Rancourt prior to that because Mr. Rancourt, prior to that cross-examination, wanted to make sure that I had a room big enough to have three or four people to be there and I said "The public can't attend cross-examinations."

M. RANCOURT: Monsieur le Juge, c'est maintenant moi qui vais m'objecter. Je pense que là on parle des mérites de la motion open court, on ne parle pas de ce - de la motion qui est devant nous aujourd'hui.

MR. DEARDEN: I'm talking about prejudice, Your Honour and I'm trying to argue.

THE COURT: Yes, so - on va laisser maître Dearden continuer, il parle de la section 13 - règle 13(c). Merci.

MR. DEARDEN: So Your Honour, if you turn to Mr. Hickey's motion record tab B - tab B as in Bobby, you'll see a publication that he put out on the

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internet that says "Lawyer Richard Dearden attacked self-represented witness, the case of St. Lewis and Rancourt." And the lead paragraph tells us that on September the 6th he attended a cross-examination hearing in University of Ottawa Professor of Joanne St. Lewis case and in this, amongst other things, he accuses me of intimidation, being abusive, unethical behaviour, but more importantly, if you turn the page, Your Honour, and this is on - I'm just making submissions here on prejudice.

M. RANCOURT: Si je peux m'objecter, Monsieur le Juge.

LE TRIBUNAL: Non, non, attends, vous avez votre tour.

M. RANCOURT: Mais là c'est une objection.

LE TRIBUNAL: On peut pas s'objecter à tous et à chaque moment, donc - c'est une question d'approche....

M. RANCOURT: C'est simplement parce que la question à savoir....

LE TRIBUNAL: Excusez. Excusez. Je parle. Quand vous avez votre chance - quand un autre parle, sauf que des exceptions qui fait des fausses représentations de quelque sorte, les exceptions qu'on peut avoir des interruptions sont très limitées, donc vous êtes sans avocat, mais quand même il faut respecter les - les règles de procédure ici dans le tribunal, merci.

MR. DEARDEN: Thank you, Your Honour. So I'm asking you - and again it's on the point of you know, would there be prejudice caused by Mr. Hickey in particular getting any intervention status in this

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case. So you - you have on that article that I'm taking you through, the - the defamatory statements he makes about me. But if you flip the page and you look at the first full paragraph on the next page at tab B, he also defames Professor St. Lewis by saying:

"Due to the serious evidence of corruption and fraud surrounding...of St. Lewis' response to the student appeal centre of 2008, Report of Systemic Racism at the University of Ottawa, U of O has a responsibility to state its involvement, monetary or otherwise."

This person who is asking you for leave to intervene in here has caused great prejudice already and we have two years to sue him for liable. He has had a notice to take down this defamatory statement and he's ignored it. And that's another movie. But this is a sample of prejudice that he has caused in aggravating Professor St. Lewis' damage. And if you turn to the next article in that same tab, Your Honour, B, you should find another article dated October 7th, where the headline now has "The House Negro" term in it because Mr. Rancourt is being sued for calling Joanne St. Lewis - Professor St. Lewis a house negro of President Helen Rock [ph].

M. RANCOURT: Là je m'objecte, Monsieur le Juge, ça c'est une fausse représentation des faits.

LE TRIBUNAL: Bien, je le vois ici là - je le vois ici dans son article.

M. RANCOURT: Mais ce qu'il a dit à mon sujet est une fausse représentation des faits.

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LE TRIBUNAL: Mais on parle de monsieur Hickey.
We're dealing with Mr. Hickey....

M. RANCOURT: J'aimerais qu'il se tienne à parler de
monsieur Hickey, parce que ce qu'il a dit à mon
sujet est faux.

LE TRIBUNAL: Okay. So - ça c'est - the author of
this is Mr. Hickey, is that right?

MR. DEARDEN: Yes.

THE COURT: So it's your - your statements, oh,
that's fine. Merci.

MR. DEARDEN: So Your Honour again on the prejudice
of allowing Mr. Hickey to come and attend another
cross-examination where he was improperly in
attendance on September the 6th, 2011 - and I'm
showing you just samples of what he wants to do,
what he wants to do when he's physically in there is
to completely give a one-sided biased defamatory
report of - of what he perceives to be happening in
the cross-examination room. And that's why a non-
party through his partisan supporter of Mr. Rancourt
and who defames Professor St. Lewis to further
aggravate her damages should not be given
intervention status on the prejudice issue alone,
but the key submission, and that will be my last
point, Your Honour, is he is no - his interest is no
greater than any other member of the general public.
He hasn't demonstrated an actual interest to you and
therefore his request to intervene in this leave to
appeal motion should be denied, in my respectful
submission. Subject to any questions, Your Honour,
that's my submissions.

THE COURT: So now - and Mr. Doody are you next?

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MR. DOODY: I'm - I'm - I agree with it, adopt the submissions of Mr. Dearden and I just have a few points to add. Mr. Hickey submits that he is in the same position as my client, the University of Ottawa is with respect to the champerty motion and with the greatest of respect, that is simply false. Justice Beaudoin ruled that the notice of motion - of Mr. Rancourt's, which sought to have the action stayed or dismissed on the grounds that the action was a result of maintenance and champerty to which the university was party, because the university was funding Professor St. Lewis' legal fees, Justice Beaudoin ruled that under 30 - rule 37.07(1) that notice of motion should have been served upon the university because it was a person affect - who would be affected by the order sought. And that's a completely different situation in my respectful submission from the situation of Mr. Hickey. The university's participation in the alleged wrong of maintenance and champerty is key to Mr. Rancourt's champerty motion and the motion in fact is aimed at the University of Ottawa. The motion should have been served on the university and as Justice Beaudoin ruled, the university had the right - has the right to make submissions and file materials, evidentiary materials in that motion.

Mr. Hickey is a member of the public, no more, no less. If he may appear on this motion, any member of the public may appear. Court proceedings take place in public but all members of the public do not have standing. Mr. Hickey's materials, in my

5 submission, add nothing to Mr. Rancourt's. In fact,
I will further and propose what Mr. Dearden was
directing the Court's attention to, Mr. Hickey's
materials show Mr. Hickey's propensity to make
mischievous after having been given public access to
out of Court examinations in a Court process. And
in my respectful submission, Mr. Hickey's attempt to
take up this Court's time by hearing him on Mr.
Rancourt's motion is another attempt to interfere
with the efficient disposition of this case by the
courts of this province. Those are my submissions.
10 THE COURT: Thank you. Mr. Hickey.

M. RANCOURT: Monsieur le Juge...

LE TRIBUNAL: Oui.

15 M. RANCOURT: J'aimerais avoir la chance de faire des
soumissions alors que monsieur Hickey puisse
répondre...

LE TRIBUNAL: Non, non. Non, non. Non, non. Non,
non, parce que...

20 M. RANCOURT: ...parce que je suis une partie de cette
motion et je ne suis pas entendu....

MR. DEARDEN: Sorry Mr. Rancourt. Sir, we just have
a little communication problem here. It's not -
we're not getting a translation. It's not working.
25 Channel three.

REGISTRAR OF THE COURT: I'm not...Your Honour.

MR. DEARDEN: Okay.

INTERPRETER: Is the thing on?

MR. DEARDEN: Yeah, it is.

30 INTERPRETER: Okay, good.

MR. DEARDEN: So I wonder if - Mr. Rancourt, if you
could just repeat that, please.

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5 M. RANCOURT: Oui, alors cette motion est entre deux parties opposants – je suis un de ces parties et je suis exclus de cet échange et avec réponse de monsieur Hickey, alors je demande à la cour d’être entendu sur cette question de demande d’intervention de monsieur Hickey. Nous sommes des entités séparées et j’aimerais bien être entendu sur cette question-là.

10 LE TRIBUNAL: Okay, donc je vais vous entendre d’abord.

M. RANCOURT: Merci. Merci, Monsieur le Juge.

LE TRIBUNAL: Très brièvement parce que c'est – brièvement.

15 M. RANCOURT: Oui. J’ai quelques points à faire.

LE TRIBUNAL: Okay.

M. RANCOURT: Et je serais tout aussi bref que monsieur Dearden. Alors je vais aller au point le plus proche – le plus important et voici – la décision du juge Beaudoin est très claire.

20 LE TRIBUNAL: On parle de monsieur Hickey. On parle de monsieur Hickey.

M. RANCOURT: Oui.

LE TRIBUNAL: Seulement sur des questions de – est-ce que monsieur Hickey...

25 M. RANCOURT: A le droit d’intervenir.

LE TRIBUNAL: ...peut – droit d’intervenir dans cette dispute.

M. RANCOURT: Tout à fait.

LE TRIBUNAL: Oui.

30 M. RANCOURT: Tout à fait.

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LE TRIBUNAL: Vous supportez sa requête ou sa demande, c'est ça? Vous supportez sa demande, vous opposez ou vous supportez?

M. RANCOURT: Je vais - je suis d'accord avec sa demande, je crois qu'il devrait avoir le droit d'intervenir.

LE TRIBUNAL: Donc vous êtes en faveur?

M. RANCOURT: Je suis donc en faveur de son intervention.

LE TRIBUNAL: En faveur de son interven....

M. RANCOURT: Je ne sais pas comment il va intervenir, mais je crois qu'il devrait avoir le droit d'intervenir.

LE TRIBUNAL: Okay.

M. RANCOURT: Alors voici, le Juge Beaudoin a établi un ordre qui s'applique à toute cette action et cet ordre était très clair, elle est explicite, elle date du 8 février et elle dit:

« Une personne affectée doit être servie avec la notice de motion. Suite à ça, à cause des règles, ça implique qu'elle a un droit de réponse. »

Alors j'ai servi une personne affectée, à mon sens, c'est-à-dire monsieur Hickey. Il est clairement affecté.

LE TRIBUNAL: Vous avez signifié monsieur Hickey - vous avez signifié monsieur Hickey?

M. RANCOURT: Tout à fait.

LE TRIBUNAL: Donc - c'est-à-dire selon vous vous pouvez signifier n'importe qui dans le public puis il devient des parties dans cette instance?

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M. RANCOURT: Je - je....

LE TRIBUNAL: Donc c'est à votre choix de...

M. RANCOURT: Non.

LE TRIBUNAL: ...signifier monsieur et madame un tel
puis ils peuvent intervenir?

M. RANCOURT: À mon sens, Monsieur le Juge....

LE TRIBUNAL: Selon vous c'est le choix à vous?

M. RANCOURT: À mon sens, Monsieur le Juge, cette
question au centre c'est la motion de la cour
ouverte, et dans cette question les médias ont un
droit d'intervention et c'est pour ça que j'ai servi
monsieur Hickey et j'ai aussi mis mes documents sur
l'internet pour que les autres membres des médias
soient au courant de cette affaire.

LE TRIBUNAL: Donc....

M. RANCOURT: Pour qu'ils aient la possibilité de
demander à intervenir eux aussi.

LE TRIBUNAL: Donc vous pouvez....

M. RANCOURT: Donc....

LE TRIBUNAL: Vous pouvez signifier le Citizen ou Le
Droit ou n'importe...

M. RANCOURT: Oui.

LE TRIBUNAL: ...quel qui - tout le monde a le droit
de se présenter puis participer dans cette - cette
instance entre vous et puis l'université et puis
aussi madame St. Lewis?

M. RANCOURT: Non.

LE TRIBUNAL: Ça devient....

M. RANCOURT: C'est - je ne parle pas de....

LE TRIBUNAL: Ça devient impossible d'avoir un
instance - de gérer un instance avec tout le monde

au Canada qui peuvent se présenter – et dont on a pas les – c'est ça votre – votre position?

M. RANCOURT: Non, j'aimerais faire ma position, s'il vous plaît, Monsieur le Juge, si vous me permettez.

LE TRIBUNAL: Bien c'est ça, vous avez signifié, vous m'avez dit que – parce que vous avez décidé de signifier monsieur Hickey, donc....

M. RANCOURT: Non, ce que je suis en train d'expliquer, Monsieur le Juge, si vous permettez, c'est la chose suivante. Au cœur de l'affaire c'est la motion sur la cour ouverte, ce n'est pas l'action dans le tout; ça c'est clair. Et dans cette motion de la cour ouverte, il est explicitement – explicitement question du principe de la cour ouverte tel qu'il pourrait s'appliquer dans les examinations hors cour. Donc....

LE TRIBUNAL: Ça c'est votre – ça c'est votre motion.

M. RANCOURT: C'est une motion que j'ai déposé...

LE TRIBUNAL: Vous avez – vous avez déposé....

M. RANCOURT: ...ça été refusé et c'est – c'est là que je demande autorisation pour aller en appel.

LE TRIBUNAL: Oui.

M. RANCOURT: D'accord.

LE TRIBUNAL: Non, non, je comprends. Ça c'est votre....

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est – ça on parle de monsieur Hickey qui vous – mettons – il vous supporte dans cette motion. Lui aussi il veut vous supporter, mais il dit pas qu'il supporte....

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M. RANCOURT: Je pense que ça c'est un – un mot sur la couverture, ce qu'il veut dire c'est qu'il veut le droit....

LE TRIBUNAL: « In support of the defendant's motion. »

M. RANCOURT: D'accord.

LE TRIBUNAL: Il vous appuie – il vous appuie sur votre demande, non?

M. RANCOURT: Le point central c'est que monsieur Hickey veut intervenir. Il veut intervenir pour – parce que la motion de la cour ouverte l'implique directement en tant que et membre du public et membre des médias. Il a déjà démontré son intérêt à être – à appliquer ce principe de la cour ouverte et à être présent. Il a déjà montré qu'il écrit des rapports sur ce qu'il observe dans ces choses-là. Monsieur Dearden n'est pas d'accord sur la façon qu'il écrit ni les propos qu'il écrit, mais ça c'est une autre question qui n'est pas pertinente.

Monsieur Hickey donc a démontré tout cela. Il est donc une personne affectée si on l'empêche d'aller dans ces examinations. C'est clair qu'il est une personne affectée. C'est pour ça que je l'ai servi.

LE TRIBUNAL: Non, n'importe qui qui démontre un intérêt dans cette matière seront affectés parce que se sont des membres du public, donc n'importe qui qui démontre un intérêt dans cet instance, selon votre logique, aurait droit à participer, c'est ça?

M. RANCOURT: Non, écoutez, Monsieur le Juge...

LE TRIBUNAL: C'est quoi les critères?

M. RANCOURT: ...voici – voici la précision.

LE TRIBUNAL: C'est quoi les critères? C'est quoi les critères.

M. RANCOURT: Mais Monsieur le Juge vous....

LE TRIBUNAL: Qui démontre un intérêt donc il peut - peut s'impliquer dans votre cause?

M. RANCOURT: Mais vous me demandez ce que je suis en train de dire alors laissez-moi préciser...

LE TRIBUNAL: Non.

M. RANCOURT: ...s'il vous plaît, Monsieur le Juge.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: Voici la chose, d'après moi, tous les médias qui voudraient intervenir pourraient faire demande d'intervenir. Évidemment si on avait trop ça serait à la cour de gérer ce problème. Mais il y a qu'en ce moment une personne qui fait demande pour intervenir. On a pas le problème d'avoir trop de personne. Ça ça serait un autre problème différent, mais c'est clair, à mon sens, que les médias ont le droit d'intervenir, c'est-à-dire auraient en principe le droit d'intervenir dans cette motion de cour ouverte parce que ce sont les médias qui voudraient accéder dans la salle. Tantôt on a dit, par exemple, on a dit monsieur Hickey et moi veulent la même chose, pas du tout, moi je veux que ce soit un système de cour ouverte lors des examinations, parce que je veux un processus équitable et juste et ouvert. Monsieur Hickey veut que ce soit ouvert pour une raison tout à fait différente, c'est parce qu'en tant que membre du public, il veut entrer dans la salle et en tant que membre des médias il veut entrer dans la salle, ce ne sont pas les mêmes raisons. Moi je ne souhaite pas être un membre du

public ou un membre des médias. Ce n'est pas mon but. Je souhaite un processus équitable et le principe de la cour ouverte est précisément conçu pour ces deux raisons-là qui sont distinctes. D'un part, un processus juste et d'autre part accès au public et aux médias dans les processus de la cour. Ça c'est la motion de la cour ouverte. Nous avons deux raisons distinctes pour être en faveur du principe de la cour ouverte pour ces examinations-là, et c'est dans cette mesure-là que monsieur Hickey veut intervenir et il veut intervenir en tant que - par rapport à ses droits de Charte, en tant que membre du public et le droit de la liberté de la presse. Ce sont ces deux raisons pour vouloir intervenir qui sont très différentes des miennes. Ça c'est un point que je voulais faire.

LE TRIBUNAL: Okay.

M. RANCOURT: Deuxièmement, il faut comprendre que monsieur Doody n'a pas demandé un droit d'intervenir dans la motion actuelle d'aujourd'hui. Il ne l'a jamais demandé. Et on ne lui a jamais donné. Le Juge Beaudoin ne lui a pas accordé le droit d'intervenir aujourd'hui. Monsieur Doody a demandé le droit d'intervenir uniquement dans la motion champerty, et on lui a donné ce droit-là avec les raisons que monsieur - avec - en utilisant les raisons que monsieur Beaudoin a expliquées. Donc à mon sens monsieur Doody n'a pas demandé d'intervenir, il n'a pas déposé une motion pour intervenir et il est ici pourquoi? Monsieur Doody est ici parce qu'il veut empêcher le public et les médias d'être dans les salles d'examinations.

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Monsieur Hickey lui veut permettre que les médias et le public soient dans les salles d'examinations. Ils sont exactement sur un point d'égalité monsieur Doody et monsieur Hickey; un veut empêcher accès public, l'autre aimerait que ça soit possible l'accès public. Et les deux n'ont pas fait demande pour intervenir, et les deux se sont basés sur l'ordre du Juge Beaudoin qui a dit très clairement le 8 février toute personne affectée doit être signalée et a automatiquement - et il a utilisé ce mot-là, automatiquement droit d'intervenir. Pour cette raison monsieur Doody a cru interpréter qu'il avait le droit d'intervenir aujourd'hui, alors qu'il l'a pas demandé. Pour cette même raison monsieur Hickey a cru lui aussi en lisant très explicitement l'ordre du Juge Beaudoin que je pourrais lire ici aujourd'hui si vous permettez, et donc lui aussi a conclu qu'il avait le droit d'intervenir, que c'était automatique, que c'était même pas une question. Et maintenant on a décidé aujourd'hui de débattre....

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LE TRIBUNAL: Mais ça c'est la logique - la logique qui suit c'est que s'il était affecté, parce qu'il est un membre du public, donc il peut pas se présenter aux examens au préalable ou contre-interrogatoires, donc tout le monde sont affectés.

M. RANCOURT: Mais monsieur - Monsieur le Juge, c'est précisément....

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LE TRIBUNAL: C'est ça la conclusion finalement à votre....

M. RANCOURT: Mais c'est le - c'est la qualité même du principe de la cour ouverte, Monsieur le Juge.

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LE TRIBUNAL: Non, je comprends ça.

M. RANCOURT: C'est exactement....

LE TRIBUNAL: Ça c'est votre requête, si vous avez gain de cause – puis c'est vraiment question seulement droit d'appel, question de permission de porter un appel vraiment que – c'est pas moi qui va trancher la question, parce que – ça sera la Cour Divisionnaire qui vont trancher – décider cette question, mais ici c'est question simplement de – donc je peux pas vous entendre sur votre motion.

M. RANCOURT: Non.

LE TRIBUNAL: Parce que ça – on va faire ça – donc vous supportez monsieur Hickey dans sa demande?

M. RANCOURT: Je crois qu'il a le droit. Je ne le supporte pas, mais je crois qu'il a le droit d'intervenir.

LE TRIBUNAL: Okay.

M. RANCOURT: Sur le même....

LE TRIBUNAL: Vous êtes en faveur – vous êtes en faveur mettons....

M. RANCOURT: Juste – je crois....

LE TRIBUNAL: Sa demande.

M. RANCOURT: Je veux protéger son droit d'intervenir.

LE TRIBUNAL: Oui.

M. RANCOURT: Pour la même raison que je protégerai le droit d'intervenir de monsieur Doody, parce que je crois que l'ordre du Juge Beaudoin était très clair sur cette question-là, était non ambigu et doit s'appliquer à toutes les personnes affectées.

LE TRIBUNAL: Okay. Donc est-ce qu'il y a d'autres....

M. RANCOURT: Et....

LE TRIBUNAL: D'autres points?

M. RANCOURT: Oui. Peut-être un dernier point. Donc c'est par rapport au fait que monsieur Doody n'est pas simplement un membre du public, il n'est pas simplement un membre des médias, il est dans sa personne une personne affectée d'une façon unique, c'est-à-dire qu'il a déjà assisté à deux – à deux examens hors cour, c'était le 6 septembre 2011 et cette examination s'est déroulée – a procédé avec l'accord de monsieur Dearden dans le sens qu'il s'est objecté, mais il a poursuivi et il n'y a pas eu d'interruption, ça c'est très bien passé, il y a eu aucune plainte que la présence du public à cette session-là, parce qu'il y avait trois personnes qui étaient présentes, a dérangé dans les investigations.

MR. DEARDEN: Your Honour.

LE TRIBUNAL: Juste un instant.

M. RANCOURT: Oui.

MR. DEARDEN: Your Honour, if the translation came through I – hearing Mr. Rancourt say that I didn't object when Mr. Hickey and the three other supporters of Mr. Rancourt were at the September the 6th examination, quite the contrary, what I put on the record when I asked these people to leave, when I asked Mr. Rancourt to ask them to leave and they refused to, I said "Okay, there's urgency in getting on with this cross-examination and therefore I'm putting you on notice, Mr. Rancourt, this is a liable action, your conduct as a defendant is relevant from the time you were served with a notice of liable to the end of the trial and your conduct

here in bringing members of the public and not having people leave the room....

M. RANCOURT: Monsieur le Juge, non - c'est commentaires....

MR. DEARDEN: Mr. Rancourt, could you show us some respect, please?

LE TRIBUNAL: C'est juste un à la fois.

MR. DEARDEN: So Your Honour I'm just putting on the record that I warned - I certainly objected and I warned him that I was going to use this conduct against him in the trial as evidence of malice and aggravated damages by having people such as Mr. Hickey present there and not having them leave, and then of course you saw what he wrote about Professor St. Lewis and that, so I most certainly objected to Mr. Hickey and the two others being improperly in the cross-examination on September 6th.

M. RANCOURT: Monsieur le Juge, c'est un problème de traduction, il est clair que j'ai dit il y a quelques instants que monsieur Dearden s'était objecté. Mon point était que la présence du public n'a pas dérangé la qualité d'investigation de cet interrogatoire. Et je m'objecte au dernier commentaire de monsieur Dearden où il fait allusion à malice et toutes sortes de choses comme ça. C'est un préjudice contre moi et je m'objecte à ça.

Maintenant pour continuer, donc j'étais en train de dire que monsieur Hickey a une place unique dans cette affaire parce qu'il était présent à ces deux examinations le 6 septembre, et il a voulu assister au ré-examinations qui ont - qui ont été ordonnés le

14 octobre, et le protonotaire McLeod a empêché le public d'être présent à ces ré-examinations précise du 14 octobre, donc il a été affecté, pas comme tous les membres des médias, mais comme la personne qu'il est, qu'il s'intéresse à ce cas et il voulait rapporté - il a démontré - il est aussi unique dans le sens qu'il est, je pense, le seul membre des médias qui a rapporté ce qu'il a observé pendant ces premières sessions du 6 septembre. Donc à mon sens, il a une position unique.

LE TRIBUNAL: Comme individu d'abord, c'est pas comme membre du public, c'est ça - c'est ça ma....

M. RANCOURT: Non, en tant que membre des médias...

LE TRIBUNAL: C'est ma question.

M. RANCOURT: ...Monsieur le Juge.

LE TRIBUNAL: Okay, comme médias.

M. RANCOURT: Parce que - oui, parce que Monsieur le Juge, monsieur Hickey fait partie des médias étudiants et aussi en tant que personne qui fait un blog régulier sur les affaires universitaires, la Cour Suprême a déjà établi que ce genre de blog doit être considéré comme faisant partie des médias pour ce qui est des questions légales.

LE TRIBUNAL: Okay. Donc selon vous le média pourrait participer dans tous les examens au préalable dans chaque instance parce que s'ils demandent un intérêt, ils ont le droit de se présenter...

M. RANCOURT: Non, Monsieur le Juge.

LE TRIBUNAL: ...comme un intérêt de média?

M. RANCOURT: Non, Monsieur le Juge. C'est pas ce que je dis.

LE TRIBUNAL: Pourquoi pas? C'est exactement ça que vous dites.

M. RANCOURT: Mais laissez-moi préciser, Monsieur le Juge. Votre....

LE TRIBUNAL: Le média - monsieur Dearden, peut-être qu'il va vous appuyer sur ce point-là.

M. RANCOURT: D'accord. Mais laissez-moi - justement c'est assez....

LE TRIBUNAL: Peut-être c'est monsieur Dearden - maître Dearden qui - qui fait ces sortes de présentations....

M. RANCOURT: Je suis conscient, mais - mais....

LE TRIBUNAL: Vous supportez monsieur - maître Dearden....

M. RANCOURT: Sur ce point-là, absolument et de façon....

LE TRIBUNAL: Le média aurait droit à n'importe quel temps de se présenter pour tout examen...

M. RANCOURT: Oui.

LE TRIBUNAL: ...au préalable.

M. RANCOURT: Mais avec tout respect, Monsieur le Juge, cette question de est-ce qu'on a le droit de se présenter à n'importe quel moment dans les examinations - pas au préalable, non, non, mais les examinations sur l'affidavit, parce qu'au préalable c'est très différent.

LE TRIBUNAL: Okay.

M. RANCOURT: Et je vais - dans ma motion sur la cour ouverte j'explique cette différence-là, mais par rapport à cette question-là, oui, monsieur Dearden et moi sommes entièrement d'accord, mais ça,

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Monsieur le Juge, avec tout respect, c'est les mérites de la motion sur la cour ouverte.

LE TRIBUNAL: Oui. Donc....

M. RANCOURT: Et ça n'a pas lieu ici.

LE TRIBUNAL: Non.

M. RANCOURT: Ici ce que j'avance....

LE TRIBUNAL: C'est une question de....

M. RANCOURT: C'est que les médias devraient avoir le droit d'intervenir...

LE TRIBUNAL: D'être présents.

M. RANCOURT: ...pour faire appel par rapport à cette question.

LE TRIBUNAL: Chaque fois qu'il y a une - des contre-interrogatoires sur des affidavits dans n'importe quelle instance, le média a droit d'être présent?

M. RANCOURT: Ça c'est la motion cour ouverte, Monsieur le Juge.

LE TRIBUNAL: Mais ça c'est selon vous. Monsieur Hickey dit ça c'est son intérêt comme membre du média qu'il veut être présent parce qu'il a décidé qu'il veut agir comme un membre du média.

M. RANCOURT: Oui, tout à fait, c'est bien ça.

LE TRIBUNAL: Okay. Merci. Merci. Donc, je pense que j'ai votre point. Est-ce que j'ai compris votre point - c'est le point de monsieur Hickey aussi je pense?

M. RANCOURT: Oui, mais ça ça parle des mérites de la motion cour ouverte...

LE TRIBUNAL: Non, non. Non, non. Non, non.

M. RANCOURT: ...alors....

LE TRIBUNAL: C'est l'intérêt unique de monsieur Hickey. On est d'accord sur la question de - est-ce

qu'il a droit d'intervenir, c'est la seule question ici qu'on...

M. RANCOURT: D'accord.

LE TRIBUNAL: ...qu'on demande.

M. RANCOURT: Alors j'avais je pense un autre point.

Excusez-moi, je regarde quelques instants là les notes que j'avais présent. Moi j'avancerais,

Monsieur le Juge, avec - je ferais la soumission suivante - dans cette motion d'aujourd'hui

d'autorisation d'interjeter appel, je dirais que monsieur Doody et monsieur Hickey ont des positions presque identiques, les deux n'ont pas fait demande d'intervenir, les deux se sont donnés droit à cause des commentaires du Juge Beaudoin, et je -

j'ajouterais que je pense que la position de monsieur Doody est plus faible que celle de monsieur Hickey pour la raison suivante : il veut bloquer

l'accès médiatique aux interrogatoires mais il représente une université publique qui a tout intérêt à être transparente, qui a comme mandat d'être transparente et de participer de cette façon

transparente dans la société, alors moi je dirais que la position de monsieur Doody, si elle est pas égale à celle de monsieur Hickey aujourd'hui, elle est plus faible que la position de monsieur Hickey aujourd'hui. Et je demanderais que si nous allons bloquer monsieur Hickey dans son intervention, on

devrait avoir la même inspection sur le droit, en tant que statut d'intervenant de monsieur Doody. Il me semble que ça serait juste d'appliquer les mêmes critères, pour ce qui est d'aujourd'hui, à monsieur

Doody qu'on est en train d'appliquer à monsieur Hickey, et avoir la même examination....

LE TRIBUNAL: Il n'y a pas de motion par rapport à maître Doody. Je n'ai pas lu aucune documentation à ce point-là, ni dans vos mat - ça c'est du nouveau là, vous avez pas - c'est pas dans votre requête.

M. RANCOURT: Non, non, il y a - il y a une motion, Monsieur le Juge, monsieur....

LE TRIBUNAL: Pour empêcher maître Doody d'être ici aujourd'hui, c'est ça vous portez maintenant?

M. RANCOURT: Non, non.

LE TRIBUNAL: Parce que j'ai pas vu ça dans les documents.

M. RANCOURT: Non, mais....

LE TRIBUNAL: Vous objectez que maître Doody soit ici?

M. RANCOURT: Non, ce que je suis en train de dire, Monsieur le Juge, c'est que par rapport à leur statut d'intervenant, les deux ont - sont dans la même situation. Monsieur - monsieur Doody n'a jamais été donné par la cour la permission d'intervenir dans cette motion d'aujourd'hui, jamais. Et il ne l'a jamais demandé. Et - et il suppose qu'il a le droit, mais il l'a jamais demandé, il a demandé uniquement, et le record - les...de la cour sont très claires sur cette question-là, il a demandé au Juge Beaudoin uniquement d'intervenir dans la motion champerty, et le Juge Beaudoin lui a donné ce droit par ordre. Il n'a pas demandé d'intervenir ici aujourd'hui. Par contre, il a soumis des documents comme - et à la

même date que monsieur Hickey a soumis des documents.

LE TRIBUNAL: C'est - peut-être juste un instant là. So I think that's correct, Mr. Doody, the University is not seeking to be an intervener in the actual case, you were affected by a motion that's brought in - so you're permitted to participate in the champerty motion, is that....

MR. DOODY: Yes, and I'd like to respond to what my friend just said.

THE COURT: Okay.

MR. DOODY: But I'd like to have him finish...

THE COURT: Okay.

MR. DOODY: ...because if I start talking now....

THE COURT: Okay.

MR. DOODY: I'm worried it will just prolong things.

THE COURT: Okay.

M. RANCOURT: Alors je veux simplement re-clarifier. Il y a trois choses - il y a l'action dans le tout, il y a une motion pour champerty, et il y a une motion pour cour ouverte. La motion d'aujourd'hui pour autorisation....

LE TRIBUNAL: C'est la cour ouverte - ce principe-là, c'est ici aujourd'hui, on est dans une cour ouverte. On est en cour, la cour est ouverte.

M. RANCOURT: Oui.

LE TRIBUNAL: Il n'y a pas de question qu'il y a des restrictions.

M. RANCOURT: Non.

LE TRIBUNAL: On est d'accord avec ce principe...

M. RANCOURT: Je suis en train d'expliquer...

LE TRIBUNAL: ...quand qu'on est en cour.

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M. RANCOURT: ...qu'il y a - qu'il y a trois composantes, il y a l'action dans le tout.

LE TRIBUNAL: Oui.

M. RANCOURT: Il y a une motion distincte de champerty.

LE TRIBUNAL: Oui.

M. RANCOURT: Dans laquelle monsieur Doody a eu le droit d'intervenir. Et il y a une motion distincte que j'appelle au besoin d'un meilleur nom, que j'appelle la motion cour ouverte. Mais c'est une motion distincte. Et nous sommes ici aujourd'hui par rapport à un appel pour ce troisième élément qui est la motion cour ouverte. Dans cet élément, par rapport à la motion cour ouverte, monsieur Doody n'a pas un droit automatique - a le même droit que monsieur Hickey d'intervenir. Il n'a pas fait plus de demande - on lui a pas - la cour lui a jamais accordé la permission.

LE TRIBUNAL: Mais là je ne suis pas ici pour s'objecter à maître Doody. On est ici pour la question de monsieur Hickey.

M. RANCOURT: Oui.

LE TRIBUNAL: Est-ce que monsieur Hickey peut être intervenant dans cette instance.

M. RANCOURT: Alors je soumets....

LE TRIBUNAL: Ça c'est la question. Donc...

M. RANCOURT: Je soumets....

LE TRIBUNAL: ...oublie maître Doody pour le moment, on va faire des représentations sur la question de monsieur Hickey. C'est monsieur Hickey qui fait sa demande, donc....

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5 M. RANCOURT: Monsieur le Juge, la seule raison que je ne me suis pas objecter à l'intervention aujourd'hui de monsieur Doody c'est parce que le Juge Beaudoin a expliqué clairement sa logique à lui pour laquelle il avait le droit d'intervenir. Cette même logique je l'ai appliqué à monsieur Hickey, et j'en ai conclu que monsieur Hickey aussi avait le droit d'intervenir.

LE TRIBUNAL: Okay.

10 M. RANCOURT: C'est pour ça.

LE TRIBUNAL: Équivalence. Okay, merci. Est-ce que – avez-vous d'autres....

M. RANCOURT: Non, merci beaucoup.

LE TRIBUNAL: Okay, merci.

15 MR. DOODY: If I may respond, Your Honour.

THE COURT: Is that the right order? You have....

MR. DEARDEN: Well, I went first. He then addressed my point.

THE COURT: So you're responding to him and Mr.

20 Hickey will get the last word? So then you'll get the....

MR. DEARDEN: I would have thought that's appropriate otherwise...

THE COURT: Okay.

25 MR. DEARDEN: ...Mr. Hickey gets sandwiched.

THE COURT: Exactly.

MR. DEARDEN: Thank you.

M. RANCOURT: Mais je....

30 LE TRIBUNAL: Monsieur Hickey est d'accord. Vous supportez monsieur Hickey – il supporte. Donc....

M. RANCOURT: Moi je trouve ça un peu inhabituel, mais....

LE TRIBUNAL: Vous avez pas un autre - okay, bien - Mr. Doody.

MR. DOODY: Thank you, Your Honour. Your Honour, I just propose to deal with what Mr. Rancourt submitted in which he compared my position here - rather my client's position here - talking about his clients - my client's position here, Mr. Hickey's position here. My client is the University of Ottawa and I just want to take you to three documents, there is a responding motion actually - bear with me for one second, Your Honour. To take the - Mr. Rancourt's motion record, if you have that, at tab I. Now, it's got a white cover and a blue backing and it's got tabs from A to J.

MR. DEARDEN: It should have a blue cover.

MR. DOODY: It's got a white front I think, at least mine - oh - oh, okay, apparently yours is blue. I'm not sure why mine is white. No, it's not that. It's much thinner. It's A to J. It's the motion record for stay pending - oh, sorry. Wrong one. I got it. I got it. So it's about the same size. And it's got no - Motion Record Leave to Appeal : Open Court - again tab one, two and then 8K.

THE COURT: I don't think I have it.

MR. DOODY: That's the motion we're here to - Your Honour.

MR. DEARDEN: if it would assist in - you don't mind a highlighted version of it, no writing, I can hand mine up to the Court, just to expedite things.

MR. DOODY: Perhaps we should.

MR. DEARDEN: Does he have an extra one.

MR. DOODY: Do you have an extra one, Mr. Rancourt?

MR. DEARDEN: It's leave to appeal, right?

MR. DOODY: Yes, leave to appeal.

MR. DEARDEN: Leave to appeal.

M. RANCOURT: C'est un document important, Monsieur
le Juge, parce que c'est la...

LE TRIBUNAL: Oui.

M. RANCOURT: ...motion d'aujourd'hui.

LE TRIBUNAL: Oui, oui. Oui, oui, oui. Donc - I
don't see a copy of it here. No, I'll deal with Mr.
Hickey first and I will take a moment - I'm not sure
that I've seen this one actually.

MR. DOODY: That's - that's the motion record we're
here today on.

THE COURT: Okay.

MR. DOODY: Yes.

THE COURT: Because - it's not been...

MR. DOODY: If you could just turn to....

THE COURT: ...part of my materials that were filed.
Je ne sais pas où est-ce que - donc....

MR. DOODY: Just turn to tab K. Tab K is Justice
Beaudoin's endorsement at the case conference. And
paragraph number one, Justice Beaudoin said this:

"The University of Ottawa seeks leave to
intervene in the defendant's motion to have a
finding that the agreements between the
plaintiff and the university violates the rule
against champerty. No leave is required as the
university would be affected by this order,
service of the notice of motion must be made on
the university pursuant to rule 37.07(1). It is
implicit in that rule that the university has
the right to file material in response to the
notice of motion. Mr. Doody has accepted
service of the notice of motion on behalf of the
university."

5 That's what Justice Beaudoin ordered. And during
the hearing, Justice Beaudoin - and I won't ask you
to find this document, but a transcript which has
been filed at page eight, line 18, Justice Beaudoin
said:

10 "The case law is clear, the motion seeks to
affect an agreement that was entered into
between Ms. St. Lewis and the university. The
university is a party, it has to be served. So
the issue of standing is a non issue, Mr. Doody,
no motion is necessary. If you are served,
implicit in that is the right to appear to make
representations."

15 So that's what Justice Beaudoin ordered, and he
ordered that pursuant to rule 37.07 because he found
that the university was affected, indeed that the
champerty motion, which seeks to stay or dismiss the
action on the grounds that it's the product of a
champerty - of champerty and maintenance, because
20 the university is funding the plaintiff's legal
fees, he seeks to have the action stayed or
dismissed. That, according to Justice Beaudoin's
order, gives the university the right to file
material, file evidence and make representations in
25 the champerty motion.

30 This - this motion before you is an interlocutory
motion within the champerty motion. And if you turn
to tab H of the motion record, you'll see Mr.
Rancourt's notice of motion which he is seeking to
have heard should leave to appeal be granted and the

Divisional Court then allow the appeal from Justice Beaudoin's order. What Mr. Rancourt will then be seeking is that this motion be heard and the motion, if you turn to tab H and the second page, you'll see what Mr. Rancourt is seeking, the motion.

THE COURT: Open Court motion.

MR. DOODY: The open Court motion.

THE COURT: Yes.

MR. DOODY: But - but you see what he's seeking at the top of page two, the motion is for an order that all out of court examinations of witnesses and deponents of affidavits on motions, rules 39.03 and 39.02 of the rules in this action be open to the public, consistent with the open Court principle.

The out of Court examinations of witnesses and deponents of affidavits, to which he is referring, and which this motion is ultimately intended to have the public obtain access to, include three witnesses from the university of Ottawa, two whose affidavits have been filed by me, that's the president of the university, Allan Rock and Celine Delorme and the third is a witness who - upon whom Mr. Rancourt has served a summons pursuant to the provisions of rule 39 - if it's 03 of the rules, that is an out of Court examination of a witness for use on the motion. And that summons was served on Mr. Robert Giroulx who is the chair of the board of governors of the university. So those are the three individuals, at least those are three of the individuals in respect of whom Mr. Rancourt seeks to have the public appear.

THE COURT: These are in the champerty motion?

MR. DOODY: In the champerty motion. So in my respectful submission....

THE COURT: So here it's part of the champerty motion....

MR. DOODY: This is interlocutory within the champerty motion. And I have - and my client rather has every right to be here. Mr. Rancourt submits that Mr. Hickey has rights because he's a member of the media. With the greatest of respect, and I believe Mr. Dearden would be uncomfortable saying this, but in my respectful submission, the law is clear, members of the media have no greater rights in respect to section 2B of the Charter than members of the public do. And therefore Mr. Hickey is in the same position as any member of the public.

MR. DEARDEN: And just for the record, Your Honour, I totally agree with that statement. There's no high...of rights of the media over a member of the public or the parties. We've never taken that position ever.

M. RANCOURT: Monsieur le Juge, j'aimerais corriger quelque chose qui a été dit juste récemment.

LE TRIBUNAL: Oui.

M. RANCOURT: Monsieur Doody a affirmé que la motion cour ouverte est une motion « interlocutory »....

LE TRIBUNAL: Non, cet appel - cet appel - la décision du Juge Beaudoin - protonotaire McLeod, je ne sais pas - c'est un peu les deux, fait partie...

M. RANCOURT: Et....

LE TRIBUNAL: ...de cette demande à l'intérieur du - votre motion dans la section champerty.

M. RANCOURT: Exactement. Alors Monsieur le Juge - exactement, monsieur Doody vient d'affirmer précisément cela.

LE TRIBUNAL: Oui.

5 M. RANCOURT: Et ce n'est pas correct, parce que ma motion de cour ouverte dit très explicitement que je chercher accès aux examinations hors cour d'affidavit dans toute l'action, pas uniquement dans la motion champerty, mais dans la motion champerty et dans l'action dans son entier. Et donc ce n'est pas un sous motion de la motion de champerty tel que monsieur Dearden est en train de l'expliquer. Et je remarque que les - ce qu'a dit monsieur Dearden, il est en train de faire un argument pour justifier son statut d'intervention aujourd'hui. Alors....

15 THE COURT: Mr. Doody.

M. RANCOURT: Monsieur Doody, excusez-moi. Monsieur Doody.

20 LE TRIBUNAL: L'Université d'Ottawa. On devrait peut-être référer comme université, c'est son client.

M. RANCOURT: D'accord. Alors l'Université d'Ottawa est en train de - je vais tenter de me souvenir...

LE TRIBUNAL: Oui.

25 M. RANCOURT: ...l'Université d'Ottawa donc est en train d'essayer de justifier son statut d'intervenant aujourd'hui et - parce qu'il - l'Université d'Ottawa remarque qu'ils n'ont pas demandé ce statut pour intervenir aujourd'hui, de la même façon que monsieur Hickey ne l'a pas demandé. Alors....

30

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LE TRIBUNAL: Il ne fait pas partie de la motion de champerty.

M. RANCOURT: Pardon?

LE TRIBUNAL: Monsieur, champerty en français c'est quoi?

M. RANCOURT: Champerty.

LE TRIBUNAL: Champerty, c'est la même - c'est le même mot?

M. RANCOURT: Oui, champerty.

LE TRIBUNAL: Okay. Bon - dans cette motion maître Doody fait partie de cette motion. Monsieur Hickey, il ne fait pas partie de la motion du champerty, c'est ça la différence.

M. RANCOURT: Non, Monsieur le Juge.

LE TRIBUNAL: Oui, monsieur Hickey ne fait pas partie....

M. RANCOURT: Avec tout respect....

LE TRIBUNAL: Monsieur Hickey fait-il partie de la motion de champerty?

M. RANCOURT: Avec tout respect....

LE TRIBUNAL: Non, la réponse est non.

M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: Même monsieur Hickey est d'accord.

M. RANCOURT: La réponse est non.

LE TRIBUNAL: Il veut - il veut....

M. RANCOURT: Mais la question n'est pas pertinente.

LE TRIBUNAL: Il veut faire partie - il veut participer, mais monsieur - maître Doody puis l'université font partie de cette motion, c'est ça le point de monsieur....

M. RANCOURT: Monsieur le Juge, permettez-moi d'expliquer.

LE TRIBUNAL: Je pense que....

M. RANCOURT: La réponse à votre question est non, mais votre question, avec tout respect, n'est pas pertinente à ce qui se passe devant nous aujourd'hui parce que....

LE TRIBUNAL: Mais de toute façon, il n'y pas d'objection. Il n'y a pas d'objection que l'université soit présente aujourd'hui dans cette - il n'y a aucune objection que j'ai vu à quelque part - à nulle part. Votre point c'est l'université et puis monsieur Hickey sont équivalents, sont dans la même position. J'ai compris votre point, donc vu qu'il n'y a pas de dispute, il n'y a pas de motion pour la question que l'université soit ici, donc je n'ai pas à trancher les questions que j'ai pas à trancher, donc monsieur Hickey demande - monsieur Hickey demande à être un intervenant. Donc est-ce qu'il a raison? Non. Est-ce qu'il - c'est ça le seul point que moi je veux - je veux en finir - je veux en finir à un moment donné.

M. RANCOURT: Oui.

LE TRIBUNAL: De cette partie - parce que vous avez votre motion - votre motion pour - puis je vais prendre un moment pour lire avant de....

M. RANCOURT: Oui.

LE TRIBUNAL: D'entendre cette demande - permission d'appel. Je veux juste finir avec monsieur...

M. RANCOURT: Oui.

LE TRIBUNAL: ...Hickey.

M. RANCOURT: Si je peux faire un dernier commentaire.

LE TRIBUNAL: Dernier, dernier, dernier.

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5
M. RANCOURT: Tout à fait. Il y a aussi - vous avez signalé, Monsieur le Juge, qu'il n'y a pas de motion - il n'y a pas eu de motion devant la cour pour empêcher monsieur Hickey d'intervenir aujourd'hui.

LE TRIBUNAL: C'est ça. Oui.

10
M. RANCOURT: J'accepte - absolument vrai, mais mon point est le suivant, il y a aussi pas de motion devant la cour pour empêcher monsieur Hickey d'intervenir. Il y en a pas de motion devant la cour pour empêcher cela.

15
LE TRIBUNAL: Oui, mais - mais si l'université fait partie de la motion champerty, c'est ça - c'est pour ça qu'il est ici, selon monsieur - maître Doody, donc j'ai pas à - j'ai pas à déterminer cette question, donc la seule question que j'ai à déterminer, est-ce que monsieur Hickey peut participer. Donc...

M. RANCOURT: Monsieur le Juge....

20
LE TRIBUNAL: ...ça c'est pour un autre jour peut-être pour débarquer monsieur Doody - ou maître Doody de cette matière, je ne sais pas. Mais c'est pour quelqu'un d'autre.

M. RANCOURT: Mais juste....

25
LE TRIBUNAL: Ça sera pour quelqu'un d'autre à décider cette question.

M. RANCOURT: La seule précision que j'amènerais, Monsieur le Juge, c'est que la motion de champerty a à peu près rien à voir avec aujourd'hui parce qu'aujourd'hui....

30
LE TRIBUNAL: Je suis d'accord. Je suis d'accord.

M. RANCOURT: D'accord, merci.

LE TRIBUNAL: D'accord.

M. RANCOURT: Merci.

LE TRIBUNAL: Okay. Mr. Hickey, it's your - your turn to sum up.

MR. HICKEY: Okay, thank you. If I may just briefly try to clarify.

THE COURT: Well, you get to reply to the - the responses that were given by Mr. Dearden and Mr. Doody, that's - that's the reply.

MR. HICKEY: Okay.

THE COURT: If they've raised something that you feel you need to respond to, it's not - if Mr. Rancourt has said something that you don't agree with, then you could dispute him too - I will allow you to do that - you seem to be in the same camp.

MR. HICKEY: No, I don't have any dispute...

THE COURT: With Mr. Rancourt.

MR. HICKEY: ...with Mr. Rancourt.

THE COURT: Okay. So it's limited, it's not a new fresh start?

MR. HICKEY: No. No, just - just since it's fresh in our mind, I just wanted to say that the university's position was that today's motion for leave to appeal of Justice Beaudoin's order to bar the open Court motion is....

THE COURT: Well, I don't think I've heard their position on that because I'm - the only position I'm trying to get to first base I think is the analogy - are you permitted to be an intervener in this motion for leave to appeal, maybe the whole - I guess you're seeking intervention status in the whole action, are you?

MR. HICKEY: No, only on....

THE COURT: Just on the leave to appeal?

MR. HICKEY: Just on the issue of out of Court examinations, so that and to witnesses.

THE COURT: Okay.

MR. HICKEY: So the open court motion and any appeals that stem from that, such as the instant - the motion - but I just want to clarify that the university's position was that today's motion is interlocutory within the champerty motion.

THE COURT: Yes.

MR. HICKEY: That is not correct because today's motion is about leave to appeal of the barred open Court motion. And the open Court motion was for out of Court examinations in the entire action, not specifically the champerty motion. So the university's position is incorrect that this motion today is interlocutory within the champerty motion and only the champerty motion.

THE COURT: But isn't the university involved because of the champerty motion, that's why they're - which referred to the actual notice of motion?

MR. HICKEY: That's correct.

THE COURT: And they're found to be a party or a - because they're affected.

MR. HICKEY: They were affected because of the agreement between the plaintiff and the university.

THE COURT: Right, that's the essence of the....

MR. HICKEY: And so for that reason they were automatically interveners in the champerty motion.

THE COURT: Right, they're essentially an affected party and the term is not really intervener, but yes, they were permitted to....

MR. HICKEY: Okay. But....

THE COURT: Pursuant to that rule, so that - I don't really have to deal with them particularly...

MR. HICKEY: I just - I only wanted to make...

THE COURT: ...because....

MR. HICKEY: ...that today's motion is not interlocutory only within the champerty motion. It's about the open Court motion, which - it's about an appeal to that, which was about the whole action.

THE COURT: Today - today - that is part of the problem of you not filing a motion. I've been generous to you by allowing you to proceed notwithstanding that you haven't actually filed a motion because the motion is essentially a request for what you're asking from the Court.

MR. HICKEY: Uh-hmm.

THE COURT: And when you specify it in a motion, then it's clear, okay, "I want to be - to be - to make representations at this leave to appeal. Period. Or at some other motion or at the - you know, I don't know..." without having that set out in your motion, you're saying that you're asking for intervener status, not in the main action but only on the motion?

MR. HICKEY: I am....

THE COURT: Is that what you're saying?

MR. HICKEY: My motion record was submitted so that I may intervene in today's motion for leave to appeal.

THE COURT: Okay. You should have filed a motion, okay, but that's - I'm calling it a motion.

MR. HICKEY: I appreciate your leniency - that the timeline....

THE COURT: So you want to participate - you want to participate in today's hearing.

MR. HICKEY: Yes.

THE COURT: And the open Court motion?

MR. HICKEY: And...

THE COURT: Examinations....

MR. HICKEY: ...if the appeal is granted....

THE COURT: Is that - is that what you are seeking?

MR. HICKEY: I would seek to be - to present submissions if the appeal is granted today, and if the open Court motion is heard. And those are - that is the scope of my desire to intervene. That is all. It's issues connected with the access of the public and media to out of Court examinations.

THE COURT: Okay.

MR. HICKEY: So if I may, I just wanted to say that I did come prepared to argue the motion for leave to intervene today. And I do believe that the - that I passed each of the three disjunctive tests in rule 13.01 which is the rule that is followed when a party files a motion for leave to intervene. I won't get too into the details because we've heard a lot about whether or not the media are an affected party or not. One point that I want to mention is that test (c) in that rule 13.01 is whether or not the potential intervener has a question of law in common with one of the parties. And I submit that I do have a question of law in common with the defendant in that if leave to appeal is not granted and if the appeal is not successful and the defendant's open Court motion is finally never allowed to be heard on its merits, then the only

option left for me will be for me, as a member of the public, to intervene by making an application to appeal Justice Beaudoin's order of February - which excluded the public.

5 THE COURT: So that's what this - that's what this is? That's what this is? That's - you need leave to appeal an interlocutory motion, so this is the request from Mr. Rancourt to grant leave, that's the only - only issue I'm going to decide today. I'm not deciding - I'm deciding whether there's an issue that merits an appeal, you know, the test in rule 62 is the - is the two pointed test, that's all - but first of all, before I deal with that...

MR. HICKEY: Okay.

15 THE COURT: ...like whether you have something unique, would it be - they're suggesting it's prejudicial to the whole case to have another party who is making some of the allegations...

MR. HICKEY: I'd like to resp....

20 THE COURT: ...that you've - that's the submission of Mr. Dearden.

MR. HICKEY: I'd like to respond to Mr. Dearden's arguments about prejudice. Which is that - Mr. Dearden has argued that - about the content of my blog as threatening prejudice in the action, and I want to....

25 THE COURT: Sir, you're repeating what he alleges are the liable comments and you're republishing them is what he's saying.

30 MR. HICKEY: I want....

THE COURT: So he's saying that's unjust.

MR. HICKEY: I would like to suggest....

THE COURT: And you're saying you have a right to do that?

MR. HICKEY: I would like to stress the freedom of expression, it's my only concern. And that is why I would like to intervene, is in defence of my Charter rights. But the content of....

THE COURT: Freedom of - freedom of expression is subject to the limit of liable.

MR. HICKEY: I understand.

THE COURT: Okay.

MR. HICKEY: And I agree with you.

THE COURT: That is - and that's not something I'm deciding here today, but that is - that point has been made and the point is made that that's an unfair thing for you to do.

MR. HICKEY: With respect....

THE COURT: You're saying that that's not the case?

MR. HICKEY: With respect, Your Honour, I....

THE COURT: If it was liable which I'm not deciding, are you saying you have a right to repeat the liable as part of this process? Is that your point?

MR. HICKEY: I respect - with respect, I submit that the content of the blog is...

THE COURT: Is that your point?

MR. HICKEY: ...an entirely separate matter. But that is not my point.

THE COURT: Is that your point? Is that your point? That's not your point. You don't - are not asserting the right to republish liable statements?

MR. HICKEY: No, that is a separate matter in my view. If - if someone takes issue with what - the content of my blog, then that is a separate matter

and I will deal with it when that happens. But today, and my desire to intervene, is not about the contents of my media reports, it's purely about my....

THE COURT: It's been raised. It's been raised.

MR. HICKEY: The Charter of rights.

THE COURT: It's been raised in - in - that it's part of number (c), that the type of intervention that you bring to this case in fact is unjust to one of the parties, namely the person who alleged that she has been liable by the statements of Mr. Rancourt.

MR. HICKEY: If I may....

M. RANCOURT: Monsieur le Juge, est-ce que je peux demander...

LE TRIBUNAL: Non, non, non, non. Excusez.

M. RANCOURT: ...une précision.

LE TRIBUNAL: Non, non, non, non. Non, non.

MR. HICKEY: There's....

THE COURT: So that's the allegation that it's - you're making mischief I think is the other words that have been used by one of the parties in the proceeding, and in fact we've spent almost a half a day dealing with - you know, a side issue that is not part of the merits of this case, which is - you know, is concerning to me in terms of wasting Court time on side issues, not the main merits. These parties are paying - there's costs involved to the system and there's costs involved to the parties to a law suit. If members of the public can intervene wily nilly you know, at their own wish, because they wish to be there and cause additional costs, is that a good thing? That's what I - that's what I'm

thinking. Is it a good thing? And I'm not so sure frankly, but - but....

MR. HICKEY: Can I very briefly make....

THE COURT: Those are the issues you have to address.

MR. HICKEY: Okay. A submission about the arguments about prejudice.

THE COURT: Yes.

MR. HICKEY: Just - one, first, a small precision which is that in rule 13.01 about leave to intervene it's actually .2 that states:

"The Court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to proceed."

It's not 13.01 section C - part one, section C. I just wanted to correct that. Under part two, about undue delay or prejudice, I submit that - again, the content of the blog is an entirely separate matter. I do want to say that one of Mr. Dearden's arguments was that the - the term which is central to the law suit, which is the term house negro, Mr. Dearden stated that that was in the title of one of my blog books, and I just want to say that the Ottawa Citizen also published an article where that term was in the title as well. So I submit that freedom of expression is my concern. The content of the blog is - is a separate issue. And - and I'm prepared to deal with that when the time comes, but it is not a part of my desire to intervene here.

5 With regard to causing undue delay, I submit that my intervention would not disrupt in any way in this action – in this motion, sorry, would not disrupt in any way more than the University of Ottawa’s intervention would. It would not cause any more delays and it would be very succinct and brief, the content of my intervention.

10 I want to respond to Mr. Dearden’s argument that I and other members of the public were improperly in attendance on the September 6th, 2011 out of Court examination of affiants on a motion. And my response to that is that there was no rule against public observers attending. In fact, in the
15 defendant’s open Court motion, which we had looked at before, the defendant actually states on his point five – paragraph five of – under the grounds in that motion, that nothing in the rules of civil procedure prohibits public access to out of Court
20 examinations under rule 39.02 and rule 39.03. And so I submit that I was not improperly there.

25 And with regard to – I just want to echo what’s already been said about – when publication bans are closing down in the Court process is at issue, it’s normal for media organizations to be served and that’s been said....

THE COURT: Is there a publication ban?

MR. HICKEY: No, but what I mean is in....

30 THE COURT: I don’t think there is one.

MR. HICKEY: I agree.

THE COURT: There is not a publication ban on the Court proceeding, so the Court proceedings - as is this proceeding, is open.

MR. HICKEY: I agree. What I mean is when there are discretionary rules taken by the Court that limit public access or that limit the openness....

THE COURT: You're talking about out of Court - this is the issue, is the out of Court proceedings? Because this is - we're in Court now.

MR. HICKEY: I was simply trying to make a general statement that the media is normally - is often served with motions that affect. As the Ottawa Citizen, for example, or the Globe and Mail. And I want to say that as a member of the student media and as a blogger, I have the same rights and responsibilities as any member of the media and that the Supreme Court has affirmed this very clearly, and so it was proper for me to be served and I accepted service of the motion for leave to appeal today.

THE COURT: You've properly been served by whom?

MR. HICKEY: By access on the internet.

THE COURT: I'm sorry?

MR. HICKEY: By the defendant.

THE COURT: Mr. Rancourt served you?

MR. HICKEY: Yes.

THE COURT: That's - so - I think that was his point, that because you were interested, therefore he - he served you.

MR. HICKEY: That's right.

THE COURT: Okay.

MR. HICKEY: Yes.

THE COURT: I guess he could choose to serve anybody, that was my question to him, that - then anybody is - that he chooses to serve is automatically - but that's not the test.

MR. HICKEY: My point is that it is accepted in the Court that the media can be served when there is a motion that affects them. And I, as a blogger, am - I have the same rights and responsibilities as any member of the media. And I submit that the Supreme Court has very strongly stated that.

THE COURT: Do you also agree you have the same rights as a member of the public, no higher right than the public?

MR. HICKEY: That's right.

THE COURT: You agree with that?

MR. HICKEY: Yes. That the members of the media are members of the public.

THE COURT: So therefore the public has the same rights that you have. So anybody - back to my same argument then, anybody can show up at any time, that's the chaos of the situation that you're proposing - right, we're back to that full circle, your position is anyone, because the media have a right to attend...

MR. HICKEY: Uh-hmm.

THE COURT: ...open Court principles, all examinations or cross-examinations on affidavits, right, that's your position? You, as a member of the media, have a right to attend all cross-examinations of affidavits?

MR. HICKEY: That would be arguing the open Court motion.

THE COURT: But that's your position?

MR. HICKEY: I would argue that when the time was right for that.

THE COURT: That's your position as the media, you say you have a special interest, but it's the same as a member of the public, so that every member of the public can say "I have a right to attend any cross-examination because I have the same rights as the media." And you're seeking to represent the media, that are the same as the public, therefore anyone can attend.

MR. HICKEY: Can I make some clarifications?

THE COURT: Are you agreeing with that or not?

MR. HICKEY: No, I don't - I don't agree.

THE COURT: You don't agree with that?

MR. HICKEY: With some of the statements.

THE COURT: You agreed that as the media had no higher right than a member of the public - you agree with that - I asked you and you said you agreed with Mr. Dearden's - actually it was Mr. Doody I think that was perhaps putting words in Mr. Dearden's - that he ultimately agreed to and you agreed to, are you not agreeing to that?

MR. HICKEY: I don't represent a media organization. I'm a member of the media.

THE COURT: You're a member of the media.

MR. HICKEY: Uh-hmm.

THE COURT: But the question - you agreed with me that media had no higher right than a member of the public. You agreed with me. Do you still agree with me?

MR. HICKEY: Yes.

5 THE COURT: So if the media has no higher right than a member of the public, the member of the public has the same rights as the member of the media? It has to be true. It has to be true. If one is true, the other is true. D'accord, Mr. Rancourt is agreeable.

MR. HICKEY: Yes, I agree.

10 THE COURT: It has to be agreed, therefore - and his open motion is exactly that, any member of the public is entitled to be present. So you have no unique position though, that's the problem, you are just a member of the public.

MR. HICKEY: If I may, we're talking about a motion to intervene.

15 THE COURT: Yes.

MR. HICKEY: The open court motion is - is another - another matter. On the motion to intervene, I was served and accepted service....

THE COURT: Your unique position is as a member of the public? We've come back full circle.

20 MR. HICKEY: I'm saying that it's normal for members of the media to be served with motions that affect them.

THE COURT: No, no. No, no, no. No, you have to deal with my question.

25 MR. HICKEY: Okay.

THE COURT: Your unique position is as a member - interested member of the public, you want to be present? You have a right to be present you say as a member of the public?

30 MR. HICKEY: I want to intervene today.

THE COURT: You want to intervene, so you can be present at the cross-examinations, that's - you want to support that right, that's why you're here?

MR. HICKEY: That is my interest.

THE COURT: That's your interest.

MR. HICKEY: Uh-hmm.

THE COURT: So that's the same for every member of the public. Any member of the public can say "I'm interested, I want to go and attend the cross-examinations of whatever."

MR. HICKEY: Well....

THE COURT: And Mr. Rancourt is saying "That's right. Anyone can do that."

M. RANCOURT: Monsieur le Juge, avec tout respect, il y a une erreur dans cette logique.

LE TRIBUNAL: Non.

M. RANCOURT: Et c'est la suivante.

LE TRIBUNAL: Il n'y a pas d'erreur.

M. RANCOURT: Permettez-moi d'expliquer s'il vous plaît.

THE COURT: No, I've asked Mr - non, non, non, non, non, non, non, non. Non, attends.

M. RANCOURT: Monsieur le Juge, parce que....

LE TRIBUNAL: Monsieur Hickey - non, non, attends, écoutez. C'est pas votre tour. C'est pas votre tour. Mr. Hickey, that's my question to you, this is a courtroom, you can get tough questions from the Court sometimes.

MR. HICKEY: Okay.

THE COURT: And that you have to meet them. You know, you have to be prepared for that.

MR. HICKEY: So there is a distinction to be made, in my view.

THE COURT: Okay, okay.

MR. HICKEY: Which is that it is normal for the media to be served on motions that....

THE COURT: Publication bans, that type of thing.

MR. HICKEY: Right. Actions by the Court that might limit openness. And - and as a member of the media the Supreme Court has affirmed that I have the same rights as any member of the mainstream media.

THE COURT: Okay, let's assume you...

MR. HICKEY: As a blogger.

THE COURT: ...have the same members of the - rights as a member of the media, and those are the same rights as a member of the public, because we've agreed that the members of the public have the same rights as the media, correct?

MR. HICKEY: I don't know that - perhaps it's a question of....

THE COURT: Are you saying you have higher rights? That the media has higher rights than the public? Surely they inform the public, but there's no higher right.

MR. HICKEY: Can I submit that perhaps in the case of....

THE COURT: No, I'm asking you the question. I have asked you this a number of times and I think you're not - you initially agreed with me.

MR. DEARDEN: He's agreed to it three times, Your Honour.

THE COURT: I know, okay. Well then we'll move on to the next point.

MR. HICKEY: Okay. I agree that a member of the public [sic] doesn't have higher rights under section 2B of the Charter than a member of the public.

THE COURT: The media doesn't.

MR. HICKEY: Sorry, yes. But - but perhaps it's a matter of jurisprudence, I'm not - I'm not a lawyer, but I know that the media is often served in those cases, and they are given leave to intervene often when - when there's an issue of access by the public to Court processes. And that is the case today, it's a leave to appeal that is - it's about barring of a motion - the open Court motion that was about openness of the Court and so I think it is proper that as a member of the media who has been served and who is affected and who has already reported on out of Court examinations, that I am affected by today's motion for leave to appeal. My understanding of the Judge Beaudoin's order was that I would have an automatic right to file materials for today's motion.

THE COURT: I'm sorry? That you'd have the right to file materials - this is - is this in Justice Beaudoin's endorsement?

MR. HICKEY: We have - we have talked about that. Mr. Doody read, for example, the paragraph from the endorsement and he's of the opinion that it's a different case. But my understanding and my - my understanding being there and then reading the endorsement was that members....

THE COURT: Where is it?

MR. HICKEY: Okay.

THE COURT: The endorsement. Could I have the endorsement?

MR. HICKEY: It's exhibit A of my motion record, which is the thin blue one. The endorsement has been submitted in many different folders today, but if we look at exhibit A of my motion record - and it's paragraph one, which the university's counsellor did read in entire, but my point is that from reading this paragraph and from being present at the case conference, I did understand that I was an affected person and would be able to file materials and....

THE COURT: This is the university is an affected person, because they're the one that's part of the champerty motion - they're paying for the fees.

MR. HICKEY: I agree.

THE COURT: Anything else? I think we have to move - we have to close this....

MR. HICKEY: That was only to say, Your Honour, that I understood that that would apply to anybody who was affected. And I appreciate the leniency...

THE COURT: So then you wouldn't want to - then you wouldn't want to appeal the Beaudoin order if it's granted you leave to intervene. But you're seeking leave to inter - appeal - if I'm following your logic, you're telling me the Beaudoin order gave you the right to intervene?

MR. HICKEY: That was my - that was my understanding.

THE COURT: Then you wouldn't need any further right. Why would you be....

MR. HICKEY: That's why I filed material with the Court on the last occasion.

THE COURT: You're saying he granted you leave to intervene in paragraph one of that endorsement?

MR. HICKEY: No, no, I'm saying that paragraph one and the transcript from that meeting makes it clear that the judge's interpretation of the rule 37.07(1) is that any affected party who has...has an automatic right to file material.

THE COURT: So - so any member of the public has a right to file materials, is that it?

MR. HICKEY: Anyone who is affected, but that was my understanding of the interpretation.

THE COURT: Okay. Next point.

MR. HICKEY: Okay. I would like to speak to - I have already mentioned my useful contribution to today's leave to appeal.

THE COURT: No, it's only to respond - to reply to any - any new points that might have been made in response.

MR. HICKEY: Okay. Just - just from my understanding, Mr. Dearden did speak about - that I would have nothing useful to contribute. Do you want to hear my response to that or not?

THE COURT: Well, I think I've got that already. You say you're a member of the media and therefore whether it - whether - it therefore follows that it's something useful, he's saying that it's not only not useful, it's mischief, and - I'm repeating - but anyway, that was his point, and I think we've dealt - we've covered that before. You say it is useful, he says it's causing mischief and injustice.

MR. HICKEY: Right. And beyond my Charter rights, it's also - I have original evidence and arguments

to submit that speak to the public and general importance of the defendant's motion.

THE COURT: No, no, but you've got to remember we're in a law suit - there's a law suit here by the - Ms. St. Lewis, private law suit against Mr. Rancourt for liable. This is not a general public Charter hearing on some general subject, this is someone's private dispute and the Court will decide whether these comments are liable or not, or if they're - that's not something I'm deciding today and - or limits on free speech or not, but that's decided between the parties, that's how our system - everybody doesn't get to pile on, there's no piling on that everybody says "Well, I support so and so." And you get what, 50 or 100 or 1,000 people here and 1,000 people - that's now how our system has evolved and it's not how it - it would be unmanageable.

MR. HICKEY: I understand, absolutely.

THE COURT: To allow that sort of thing to happen.

MR. HICKEY: I entirely understand. My point is that part of the defendant's argument for leave to appeal - he looks at a test that's needed for leave to appeal. And part of it has to be that the issue is of general importance.

THE COURT: Yes.

MR. HICKEY: And my point is that as an intervener, I would bring original evidence and arguments that speak to that aspect of the leave to appeal.

THE COURT: Are you saying you could do a better job than Mr. Rancourt?

MR. HICKEY: I'm saying I have something to add.

THE COURT: He seems to be rather effective on his feet. Do you think - he needs your assistance, is that your point?

MR. HICKEY: I feel that I have something to add that's unique and important. For example....

THE COURT: And what was that again?

MR. HICKEY: One of the points is that the civil liberties association of the National Capital Region has emitted a public statement in favour of public access to these cross-examinations. And I noticed that this wasn't....

THE COURT: Are you a member - are you the executive part of that group, the public....

MR. HICKEY: I was invited by the board to speak and asked for their help....

THE COURT: No, but are you - if you were that group, you see, that's who generally intervenes, organizations that may have - be affected by some civil liberties, I mentioned that, but if that's - but you're not the spokesperson, you're not the president of the civil liberties association of Canada or Ontario, are you?

MR. HICKEY: No. I did ask for their help and I asked for them to help - to intervene, but they don't have the resources to do that.

THE COURT: Okay.

MR. HICKEY: And they wrote that in their public statement which is exhibit E to my motion record. But I point this out to mention that this is evidence that hasn't been before the Court and that I bring as an intervener. One of - it's one of the

reasons that I have useful information to contribute.

THE COURT: Okay, thank you. So we'll take the morning break.

MR. DEARDEN: Your Honour, just before you - I know you want to take off and I just want - I feel duty bound to tell you that when Mr. Hickey says he wasn't improperly at that September 6th cross-examination, Master McLeod certainly disagreed and if Your Honour is going to take that into consideration, I'm going to ask you to read paragraphs 19, 20 and 21 of Master McLeod's ruling where he directed that the public have no right to attend out of Court examinations and it would be at tab two of my compendium of argument that I'm going to be using on the leave, so if you were going to consider that submission, Your Honour, I ask you to read paragraphs 19 to 21 of Master McLeod's order, thanks.

MR. HICKEY: May I reply very briefly?

THE COURT: No, thank you. Thank you.

R E C E S S

U P O N R E S U M I N G

THE COURT: So what I'll do is I'll give you my decision on this matter and I see I took Mr. Hickey's motion record instead of Mr. Rancourt's motion record, and so I - I will - over the lunch, read your motion record and as well as some of the materials handed up by Mr. Dearden.

MR. HICKEY: If I may request, Your Honour, I'm having a little troubling hearing.

THE COURT: Sorry, I...

MR. HICKEY: Thanks.

THE COURT: ...thought I would read Mr. Rancourt's motion record, which I have - wasn't before me for some whatever reason, but by mistake I took your blue motion record, so again I missed Mr. Rancourt's - so I'll give my decision, then we'll break for lunch and come back and start at two o'clock.

D E C I S I O N

SMITH, J. (Orally):

The decision on Mr. Hickey's motion to be added as an intervener in the proceeding in this motion for leave to appeal, so Mr. Hickey seeks leave to intervene in the motion for leave to appeal of Justice Beaudoin's order and in any ultimate appeal of the open Court motion brought by the defendant Mr. Rancourt. The test to be met is set out in rule 13 of the rules of civil procedure. Interest in the matter on that issue, Mr. Hickey submits that he has an interest in the matter as a member of the media as he writes a blog. In argument Mr. Hickey agreed that as a member of the media he had no greater rights than a member of the public. Mr. Hickey has a personal interest in the matter, which would be the same as any other member of the public.

Rule 13.01(a) requires the intervener to have an important interest or perspective distinct from the parties and not otherwise available to the Court. I

do not find that Mr. Hickey has an interest or perspective distinct from the defendant. The nature of the case is also a factor to be considered and in this case it is a liable action between two individuals. I do not find that Mr. Hickey would make any useful contribution to the resolution of the dispute between Mr. Rancourt and Ms. St. Lewis or make a useful contribution towards resolving the question of whether or not leave to appeal should be granted from Justice Beaudoin's order or from Master McLeod's order if that turns out to be an issue. I also find that Mr. Hickey would not be adversely affected by a judgment either in favour of Ms. St. Lewis or the defendant Mr. Rancourt, as this is a private dispute between two individuals.

Finally and considering rule 13(c), there's no question of law or fact that is common between Mr. Hickey and either party to this proceeding as Mr. Hickey is not a party to any proceeding. I also find that the addition of another party who states that he supports the motion of Mr. Rancourt only adds additional time and expense to the judicial proceeding which is prejudicial to the parties where no unique perspective is advanced. So Mr. Hickey's request to be permitted to be an intervener is denied for those reasons.

MR. DEARDEN: Your Honour, may we make cost submissions or do you prefer to do that after lunch?
THE COURT: We can deal with cost submissions.

MR. HICKEY: Your Honour, I do have a number of arguments to make about costs, and I have case law that I will be referring to, so....

THE COURT: So we'll hear Mr. Dearden first of all.

MR. DEARDEN: I have a cost outline, Your Honour, Mr. Hickey. So Your Honour you see in the outline that on a substantial indemnity basis - the amount of time spent was \$3,440 and partial indemnity is about \$2,500 and I - the comment you made, Your Honour, before we took our break about when you have people who want to get involved in somebody else's private litigation, it does cost the parties time and it costs the Court time. And if you turn to page two of this cost outline, and you look right at the bottom of the page, under the bullet that says...step in the proceeding was improper, vexatious or unnecessary. I'm referring there to an email that I wrote to Mr. Hickey when he emailed the trial coordinator and told her that by his interpretation of paragraph one of Justice Beaudoin's order on February the 8th, that he didn't need to move for intervention and that he was in fact a party and so he's - you know, serve him - he tells her to serve him. I have that, Your Honour, that email that he wrote to Jackie Low, the acting trial coordinator, at tab two of the outline of argument that I provided you this morning and I would ask you - if you could turn on tab two, because I have a....

THE COURT: I didn't have an opportunity to read your materials or Mr. Rancourt's, so actually I left it

upstairs with my – I left it in my office to read over lunch.

MR. DEARDEN: I'm going to find a note on...Your Honour. I'm really just asking Your Honour if you could turn to tab two on this outline.

M. RANCOURT: De quel document?

MR. DEARDEN: Tab two of the outline of argument, Mr. Rancourt.

MR. HICKEY: Compendium of argument of Professor....

MR. DEARDEN: No, no, tab two of the outline of argument, that's opposing the intervention of Joseph Hickey, so it's a small thin volume. So Your Honour if you have tab two open, at the bottom of that page you'll see a March 20th email from Joseph Hickey to Jackie Low, the acting coordinator, and in this email he says that paragraph one of Justice Beaudoin's endorsement says he's an affected party and he doesn't – leave isn't required, and then he asks us to – that's me or Mr. Doody to serve him with our motion records and factums. He asked for us to do that. So my response, which I'm drawing your attention to here on these cost submissions is right at the top of that page, at tab two. So I wrote him an email at paragraph two and I said:

"You've ripped out of context paragraph one of Justice Beaudoin's endorsement at case conference. You have no right to intervene in Mr. Rancourt's application for intervene that will be argued on March 28th. I'm putting you on notice that if you do not inform me by the end of the day today that you have decided to not seek leave to intervene, I will be seeking costs against you in that we will be required to conduct legal research and prepare submissions

to oppose your attempt to get personally involved in this liable action to support your friend, the defendant Mr. Rancourt."

5 And of course we know that he - Mr. Hickey did not let me know that was going to change his mind about intervening and he came today and we had to do the research that you see reflected in the columns that you find at page three of the outline, that is my associate Anastasia Semenova who...in here, did 10 hours of research and in terms of preparing for the final draft of the outline I've provided to the Court, the preparation of argument, I spent four hours and then of course today we've been here for over three hours dealing with Mr. Hickey's motion.

15 I submit to you, Your Honour, that the research was required to oppose standing under rules A, B, C of 13.01(1) and also the compliance with the time limits and notice requirements in the rules, and I've already drawn your attention to the prejudice that we submit Mr. Hickey would cause - you can call him a meddler, a mischief maker, an inter-meddler, whatever, in writing the defamatory statements that he writes on his blog and I drew those to your attention. My submission - my last submission here, 20 Your Honour, is the presumptuous intervention of a partisan supporter of a defendant and what I submit is an ongoing campaign of a defamation against...

25 MR. HICKEY: Your Honour...

30 MR. DEARDEN: ...Professor St. Lewis.

MR. HICKEY: ...with respect, I object. I object to....

THE COURT: No, you'll have your chance to make your submissions.

MR. HICKEY: I object to Mr. Dearden using words like partisan supporter, as I already have.

MR. DEARDEN: Will you please...

THE COURT: Please have a seat.

MR. DEARDEN: ...sit down?

THE COURT: Please have a seat.

MR. DEARDEN: He's a partisan supporter without a doubt when you read those blogs, Your Honour, they're prejudicial, they aggravate my client's damages. We are not living in a cartoon here, Your Honour. This is real. My client has been called the house Negro of the president of the University of Ottawa.

MR. HICKEY: Your Honour, I must object, I'm sorry....

MR. DEARDEN: Will you please sit down?

MR. HICKEY: The statement of partisan supporter....

THE COURT: Please have a seat. Please have a seat. Please have a seat.

MR. HICKEY: It says that I'm not an independent thinker in this matter.

THE COURT: You will have a chance - you will have a chance to respond. We have to follow the rules in the proceedings.

MR. HICKEY: But it's - it's not fair for Mr. Dearden to use that kind of termination before the Court about my character, it's a direct attack on my character. I've asked Mr. Dearden many times to stop...

THE COURT: Please have a seat. Please have a seat.
You must respect my decisions, thank you.

MR. HICKEY: Could I have a ruling on this objection?

THE COURT: Yes, please have a seat; that's the
ruling or else you'll be excluded. You'll be
excluded from the Court.

MR. DEARDEN: Have a seat.

THE COURT: Okay.

MR. HICKEY: Thank you.

MR. DEARDEN: So my simple point, Your Honour, is
what Mr. Hickey did in the report that he issued
when he improperly attended that September the 6th
cross-examination and his attempt to meddle in this
proceeding and to be able to write further
prejudicial reports and biased reports like the ones
I drew your attention to earlier, warrant an award
of substantial indemnity cost and of course I gave
him fair notice, you know, "You've ripped out of
context what Justice Beaudoin held in paragraph one
of his endorsement, so don't make me do all this
research and spend..." then I didn't think we'd be
more than 30 minutes to be quite frank, and we've
spent three hours dealing with him, so I
respectfully submit that the cost reflected in this
outline should be awarded against Mr. Hickey in this
proceeding, Your Honour. Thank you.

THE COURT: Mr. Doody.

MR. DOODY: Your Honour, I have a similar request and
I have a consult on which - I will pass up to you,
and my submissions will be brief, Your Honour. I
submitted earlier that this attempted intervention
by Mr. Hickey was another attempt to interfere with

the efficient disposition of this case by the courts, and I'll have more submissions to make on that point when I deal with Mr. Rancourt's motion. But in my respectful submission, it is clear from what has happened today, from Mr. Rancourt's admission that he served Mr. Hickey with the motion, as what I will describe as an invitation to appear and take up this Court's time, it's clear that Mr. Hickey is here as a result of Mr. Rancourt's invitation and Mr. Hickey, as Mr. Deaden has pointed out, undertook this with full knowledge that he would be exposing himself to cost and even more fundamentally, that he would be putting the party that I represent to further expenditure and in my respectful submission, the only tool that the Court has to control such behaviour is costs. And with respect, if costs are not ordered in situations such as this, the result is an effective invitation to continue to gum up the works is far too mild a term for what is going on in this law suit, in my respectful submission, the plaintiff has alleged a liable against the defendant, she wants to have that determined. I, in my respectful submission, would not be here but for Mr. Rancourt's attempt to evade and avoid the process of justice and Mr. Hickey has, by his appearance today, signed himself up to that team, and in my respectful submission, the Court's remedy is to award cost, it's not unusual. And I - in my cost outline, in my respectful submission, I've been quite conservative in terms of the time spent, I have indicated 1.4 hours on my part reviewing Mr. Hickey's affidavit and factum, 1.1

5 hours on the part of my associate who did not appear with me today and I'm - and in my bill of costs I've only put down one hour for attendance today, as Mr. Dearden points out, we've been here three. So I - in my submission, substantial indemnity cost in the amount as I've indicated here of \$1,449.73 would be appropriate.

10 MR. HICKEY: Thank you, Your Honour. I will be arguing that no costs should be awarded against me. I submit that there is an extensive body of case law on the topic of costs related to interveners and that our written submission would be appropriate to address this question. If in your opinion that's not appropriate....

15 THE COURT: You want to make - do you want to make written submissions on the cost?

MR. HICKEY: On costs, yes. There is a vast body of case law about cost and interveners.

20 THE COURT: I will allow you to make written submissions but not greater than five pages long and you'll allow reply, if any, from the - from the - I guess you're - are you the applicants or are you the plaintiff group? That's fine then, so we'll break for lunch, come back at two o'clock.

25 MR. HICKEY: Is there a deadline? Is there a deadline for the written submissions?

THE COURT: Yes, say 10 days.

30 MR. HICKEY: Would it be possible - I'm going into an election at school and also have a thesis that I'm writing, would it be possible to have a bit of an extension on that?

THE COURT: 15....

MR. DEARDEN: I thought the election was over and you lost?

MR. HICKEY: In fact, Your Honour, the election was completely invalidated based on a faulty ballot and the election is going to be completely redone in its entirety and that's going to take up my time campaigning. I also have a thesis that I'm trying to work in advance on, and....

THE COURT: Do you want 15 days?

MR. HICKEY: Would it be possible to have 30 days? This is a lot of money that - I'm a poor student and this is - that these parties are arguing that I should pay, and I really do want to - to the best of my ability, make the best use of the case law.

THE COURT: I'll give you 20....

MR. HICKEY: And then contact a lawyer. I also - I also....

THE COURT: 20 - 20 days. 20 days to make submissions and then 10 days to make any reply.

MR. HICKEY: With respect, Your Honour, I also do need to contact a lawyer about this, you know, I need help addressing these questions.

THE COURT: I'm sorry - I'm sorry, so you have 20 days to make submissions, and there are quite serious risks, it's not without costs when you attend legal proceedings and they - these may be harsh lessons, but these are the rules and subject to your - I haven't heard your side, and whether there's a public interest public or novel issues of law, then there's some discretion - I recognize you're a student and you - it's very, very risky getting involved in law suits where costs are

incurred, but that's a separate issue, so yes, you've got 20 days to make your submissions in writing, not more than five pages, and 10 days to respond.

MR. HICKEY: Would that be 20 days counted starting tomorrow?

THE COURT: Start tomorrow.

MR. HICKEY: And I'll count 20 days on a calendar and that 20th day....

THE COURT: That's correct.

MR. HICKEY: Thank you.

M. RANCOURT: Est-ce que je peux demander une clarification? Est-ce qu'il y aura une limite de nombres de page pour la réponse, je suis juste curieux?

LE TRIBUNAL: Je ferais la même limite, mais je mettrais ça à trois pages même. Okay, we'll come back at two o'clock and we'll finish off the balance.

R E C E S S

U P O N R E S U M I N G

LE TRIBUNAL: Monsieur Rancourt, on va établir des - des temps - temps limites, time limits, pour compléter ça - cette matière, aujourd'hui, donc je propose peut-être quoi une demie heure - une demie heure. Mr. Doody, peut-être 15 minutes, quelque chose de même, réplique.

MR. DOODY: I would have thought so.

M. RANCOURT: On avait prévu une demi-journée pour la chose en entier.

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LE TRIBUNAL: Okay.

M. RANCOURT: C'était ça qui était prévu et donc j'ai préparé ce que j'ai préparé - c'est peut-être plus qu'une demie heure, pas beaucoup plus.

LE TRIBUNAL: Okay, trois quart d'heure?

M. RANCOURT: Je - j'ai pas une vision précise du temps parce que je n'ai pas chronométré là, mais c'est - je pense que c'est raisonnable.

LE TRIBUNAL: Okay.

M. RANCOURT: Et....

LE TRIBUNAL: Donc moi je - les temps limites, je tiens les gens à ces temps limites.

M. RANCOURT: Je - un problème c'est qu'évidemment il y a - j'ai deux opposants, alors....

LE TRIBUNAL: Non, j'ai - j'ai - une demie heure - 45, 30 minutes.

MR. DEARDEN: Okay, I'll go for 45.

THE COURT: You want 45?

MR. DEARDEN: I can do it under 45, Your Honour, but....

THE COURT: Because I'm thinking 30 and 15, 45. Vous aurez quoi, 15 minutes en réplique.

M. RANCOURT: On peut - on peut tenter ça, mais....

LE TRIBUNAL: Bien, c'est plus que tenter parce que je vais demander à monsieur le greffier...

GREFFIER DE LA COUR: Oui.

THE COURT: To keep track so - on va donner un avis - cinq minutes avant, give notice to whoever it may be, and then we'll get it - on va finir cette matière aujourd'hui.

M. RANCOURT: Oui, oui.

LE TRIBUNAL: Ça c'est....

M. RANCOURT: Alors pour ma présentation....

COURT REPORTER: Your Honour....

THE COURT: Pardon?

COURT REPORTER: Can we just identify - on the
record, the names of the interpreters. I have them
but I think....

THE COURT: You know what, they should be sworn
actually.

COURT REPORTER: Yes, they were....

THE COURT: Let's swear them....

REGISTRAR OF THE COURT: Okay.

INTERPRETER: I'll affirm.

THE COURT: Yes, or affirm.

MANUEL COSTA: Affirmed as interpreter [French/English]

LAURENT GAGNON: Affirmed as interpreter [French/English]

THE COURT: Before we start - I wonder if - could you
get me another book?

COURT CONSTABLE: Of course.

THE COURT: Okay. Donc Monsieur Rancourt.

M. RANCOURT: Merci. Merci, Monsieur le Juge. Alors
j'aimerais commencer, Monsieur le Juge, par préciser
que la motion qui est devant nous aujourd'hui ça à
peu près rien à voir avec une question de libelle ou
une question de champerty, mais que le corps, l'axe
de la motion est sous-tendue par une motion de cour
ouverte. Je l'ai appelé comme ça sur faute de
meilleur nom, mais ça c'est le - c'est cette motion-
là qui est au cœur de la question, la motion pour la
cour ouverte. Par contre, aujourd'hui cette motion
c'est une motion d'autorisation d'interjeter appel.

Et donc ce n'est pas une motion sur les mérites de la motion cour ouverte. Ce n'est absolument pas une motion sur les mérites de la motion cour ouverte, mais uniquement sur la question si autorisation d'interjeter appel doit être donnée.

Si mes opposants traitent des méfaits du principe de la séance ouverte en application aux interrogatoires sur affidavit, alors ils traitent des mérites d'une autre motion qui n'est pas celle-ci. Pareillement, si mes opposants traitent d'une défense res judicata ou issue estoppel, contre la motion cour ouverte, alors ils sont en train de débattre la motion cour ouverte et – et non la motion d'autorisation d'interjeter appel qui elle traite d'un refus d'assigner des dates pour la motion cour ouverte.

Donc l'ordre du Juge Beaudoin auquel je tente de faire appel c'est un ordre de refuser d'établir des dates pour entendre la motion cour ouverte. Donc cet – il y a un ordre et sur ce point mes opposants et moi-même nous sommes d'accord le Juge Beaudoin a refusé d'établir des dates pour entendre la motion cour ouverte. Et d'ailleurs dans leur factum et l'université et madame St. Lewis disent explicitement que le juge a refusé d'établir des dates pour entendre la motion cour ouverte. C'est certainement le cas.

Ce refus a empêché la motion cour ouverte d'être entendue sur ses mérites.

LE TRIBUNAL: Est-ce que ça n'a pas été porté devant le protonotaire McLeod?

5 M. RANCOURT: Non. Et je vais présenter cette première décision par le protonotaire McLeod – était toute autre décision et je vais préciser – il y a eu une information qui porte à induire en erreur que je vais clarifier maintenant et je parle je fais – je tente de faire appel uniquement à la décision du Juge Beaudoin a refuser d'établir des dates pour entendre la motion cour ouverte, ce qui a empêché la motion cour ouverte d'être entendue. Et je dois insister, je dois dire que la motion cour ouverte n'a jamais été entendue, n'a jamais été entendue. Cette motion cour ouverte n'a jamais été entendue, elle a été déposée après la décision du protonotaire McLeod.

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Donc la motion présente, celle d'aujourd'hui, traite d'équité procédurale et de justice naturelle. C'est le cœur de la motion d'aujourd'hui. Je fais appel à cette décision de refuser que cette motion cour ouverte puisse être entendue avec les procédures habituelles, et donc c'est de façon centrale une question d'équité procédurale et de justice naturelle. Elle traite aussi la motion d'aujourd'hui de la question de la compétence d'un juge de gestion de cause en conférence relative à la cause de rejeter d'entendre une motion et dans ce cas ci donc – aujourd'hui on traite de la compétence d'un juge de gestion de cause en conférence relative à la cause de rejeter d'entendre une motion sans

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avoir la motion en main. Le Juge Beaudoin n'avait pas la motion en main quand il a refusé cela.

Là je suis en train juste de donner le contexte avant de donner les faits clés. Donc je demande autorisation de faire appel à une décision de ne pas entendre une motion, pas de débattre aujourd'hui la motion qui n'a pas été reçue.

Les débats sur les mérites d'interrogatoire sur affidavit en session ouverte, et s'il y a ou pas res judicata, et cetera, doivent être remis à la motion cour ouverte elle-même. Ce sont des défenses et des arguments sur la mérite et des défenses contre la motion cour ouverte, ça doit être remis à cette motion cour ouverte, ça n'a pas lieu aujourd'hui.

Sur la question de compétence d'un juge en conférence relative à la cause, il y a une autorité sur pointe qui est celle du cas Lauer v. Stasiuk (ph) un cas de 2006 à la cour d'appel de la Colombie Britannique. Donc il y a une décision - cette décision Lauer v. Stasiuk (ph) est précisément analogue à la situation actuelle. C'est un juge qui dans une conférence pour la cause a décidé de refuser d'entendre et de donner des dates pour une motion que proposait un intervenant. C'est allé en cour d'appel en Colombie Britannique et la décision de la cour d'appel était non-ambiguë et a trouvé que le juge en gestion de cause n'avait pas l'autorité de bloquer cette motion.

Je vais parler un peu plus de cette cause un peu plus tard, mais avant j'aimerais juste prendre une petite pause pour – parce que l'interprète est de mon côté et ça me dérange un peu de l'entendre. Est-ce que ça serait possible qu'il s'assoit de l'autre côté?

LE TRIBUNAL: Peut-être – il n'y a pas de chaise.

M. RANCOURT: Mais il peut amener cette chaise. Je peux lui amener la chaise s'il le faut. Je pense que ça serait plus – excusez-moi. J'apprécie.

LE TRIBUNAL: Ça va.

M. RANCOURT: Alors cette décision de Lauer v. Stasiuk (ph) est précisément analogue en terme des faits à la situation présente, sauf que c'était par rapport à une conférence à la cause pour un cas familial, mais les principes – les principes de la compétence du juge dans une situation comme ça sont exactement les mêmes. Et les principes qui ont été appliqués dans la décision en cour d'appel sont précisément les mêmes et ne sont pas colorés par le fait que c'était une cause familiale.

Donc j'aimerais maintenant regarder brièvement cette autorité qui est Lauder v. Stasiuk (ph). Alors je prends mon factum et je vais à l'onglet neuf, et je vais au paragraphe 24. Je lis brièvement juste une section de ce paragraphe :

“With all due respect to Dove, Judge – I must conclude that he erred when he ruled upon a contested substantive issue at a FCC...”

Alors une conférence sur la cause.

...for the following reasons. First, an FCC is not the forum for making rulings on contested substantive issues."

5 Ensuite je passé au paragraphe 25, donc je lis pas en entier le paragraphe 24, je passe au paragraphe 25 et je vais à la dernière phrase de ce paragraphe :

10 "Rulings on contested substantive issues must not be made without first affording the parties the opportunity to:
a) tender evidence
b) test the evidence of the opposing party and
c) make submissions to the Court."

15 J'ai eu droit à aucune de ces - de ces choses qui normalement serait admise. Ensuite je passe au paragraphe 27 de cette autorité et je vais à la dernière phrase et je lis :

20 "No rule however permits a judge to place an evidentiary burden upon the applicant in relation to a substantive issue which must be met before a hearing date is set."

25 Ce qui était le cas. Je vais montrer les évidences dans quelques instants. Donc il y a une jurisprudence non-ambiguë concernant un rejet en conférence relative à la cause de cédule une motion pour qu'elle soit entendue sur ses mérites. Et je dois aussi ajouter que dans cette cause de cour d'appel de la Colombie Britannique, il y a un
30 paragraphe où les juges disent très clairement :

« Ce droit est indépendamment des mérites de la motion qui est rejetée. »

Donc il y a cette jurisprudence. Je me tourne maintenant aux faits. Je ne sais pas si Monsieur le Juge vous aimeriez que je présente les faits succinctement et de façon chronologique en ce moment.

LE TRIBUNAL: J'ai lu votre factum puis aussi j'ai lu votre dossier ici.

M. RANCOURT: Okay. Donc je vais me concentrer sur juste certains faits alors.

LE TRIBUNAL: Dis-moi - oui, c'est ça.

M. RANCOURT: Okay.

LE TRIBUNAL: Les points principaux.

M. RANCOURT: D'accord. Donc je vais passer en priorité un fait qui d'après moi est le seul fait crucial qui est contesté entre les deux parties. Et ce fait - et c'est donc je me sens obligé de corriger des annales de la cour par rapport à ce qui a été avancé par mes opposants. Alors voici, je vais parler de ce fait et c'est un peu collatéral de parler de ce fait dans la motion d'aujourd'hui, mais je me sens obligé de le faire parce que monsieur Dearden et monsieur Doody ont mis beaucoup d'importance sur cette question, c'est la question res judicata et l'ordre du protonotaire McLeod. Donc je veux clarifier par rapport à ça.

À la surface les représentations des messieurs Dearden et Doody peuvent sembler raisonnables mais elles sont basées sur une fausse affirmation. Pour

présenter ma réponse à ce problème, j'ai préparé un compendium que je vais vous distribuer maintenant. You'll have to share that one.

THE COURT: No, we don't want to share.

M. RANCOURT: J'ai fait juste une copie pour qu'ils se la partage, j'ai fait ça à la dernière minute. Donc j'ai préparé ce document par rapport à cette question qui est contestée. Monsieur Dearden a prétendu devant le Juge Beaudoin et prétend maintenant devant cette cour que l'ordre du 6 octobre, 2011 du protonotaire McLeod venait d'une motion et s'appliquait à toute la cause présente. Alors si vous voyez – je vais commencer avec l'onglet deux dans ce compendium, c'est le notice of motion de madame St. Lewis qui a mené à la séance du 6 octobre 2011 et qui était la motion qui était devant le protonotaire McLeod. Et cette motion, dans tout ce notice of motion, il y a aucune mention de l'accès public aux examinations hors cour. Il y a aucune mention de cette question de session ouverte ou de qui a droit d'accéder à ces choses en cour. Il y a aucune mention de ça dans cette motion. Donc la question quand elle est survenue devant le protonotaire McLeod était collatérale, elle était à côté, ce n'était pas l'objet premier de la motion et c'était même pas un objet mentionné. Ça m'a pris par surprise qu'on ait amené cette chose-là. Première chose.

Ceci est important – le fait que c'était pas mentionné dans la motion parce que la jurisprudence a établi que les sous-éléments qui soutiennent une

cause principale ne peuvent pas être échoue
estoppel. La jurisprudence établi cette question-
là. Là je passe à mon compendium à l'onglet un où
j'ai une décision Hiltop v. Catana (ph).

LE TRIBUNAL: Donc comment ça se fait d'abord que le
protonotaire McLeod a fait sa décision....

M. RANCOURT: Alors....

LE TRIBUNAL: Donc....

M. RANCOURT: Mon point en ce moment, Monsieur
L'Honneur, pour répondre à votre question, merci
pour votre question, le point que je suis en train
de faire monsieur McLeod a fait une décision, mais
c'était une décision par rapport à une session à
venir précise - à une date précise. Ça ne
s'appliquait pas sur toute l'action.

LE TRIBUNAL: Okay. Il a fait....

M. RANCOURT: Une ré-examination à une date précise.

LE TRIBUNAL: Okay.

M. RANCOURT: Oui. Et donc comme je disais - le fait
que c'était une question collatérale - il y a une
jurisprudence qui démontre qu'une telle décision
collatérale ne peut pas faire objet d'un argument
issue estoppel, et donc là je me réfère à l'onglet
un de mon compendium. Et c'est Hiltop v. Catana
(ph) de 2003, et je vais à la page cinq de cette
décision, et je vais au petit paragraphe qui est
juste au dessus du paragraphe qui est indiqué comme
étant le paragraphe 200. Donc je vais à la page
cinq. Ensuite le deuxième paragraphe du bas si on
veut à la page cinq de cette décision. Il y a un
tout petit paragraphe là, alors je lis :

"Further, our court has held that sub issues which underlie the main issue determined in another matter are not barred by issue estoppel in a new action in which they are issues."

5 Et donc là on cite un autre cas. Et de plus, et ça c'est très important, et vous l'avez signalé tantôt, Monsieur le Juge, l'ordre du protonotaire McLeod s'appliquait uniquement aux ré-examinations du 14 octobre 2011. Alors pour – pour se voir je vais d'abord lire son ordre et là je vais à l'onglet 10 trois de mon factum, donc je m'excuse, je retourne à mon factum à l'onglet trois. Je m'excuse si on fait un peu le vas et viens là. Donc on a ici l'ordre du protonotaire McLeod et je vais au paragraphe six et sept à la fin. Alors le paragraphe six est très 15 clair :

20 "This court orders that the defendant and Claude Lamontagne are required to re-attend on October 14th, 2011, unless otherwise agreed by the parties at a place and time designed by counsel for the plaintiff to answer the questions under oath and to answer reasonable follow-up questions."

Immédiatement après le paragraphe sept:

25 "This court orders that no one but the witness, the parties, their legal counsel and the court reporter may be present at the cross-examination – the cross-examination unless otherwise agreed to by the parties."

30 Il me semble clair que dans le contexte de cet ordre, cet ordre s'applique précisément au 14 octobre. Il me semble clair. Par contre, monsieur

Dearden avance que ce n'est pas le cas et que ça s'appliquerait à l'action en tout. Et donc là pour répondre à ça je veux retourner à une jurisprudence très, très pertinente par rapport à cette question d'interprétation, alors je retourne à l'onglet un avec la décision de Hiltop v. Catana (ph). Et je vais maintenant cette fois-ci à la page quatre et là je vous demande d'aller au dernier paragraphe sur la page quatre. Et dans ce dernier paragraphe on dit très clairement :

"The burden is on the party proving res judicata..."

Et après ça tout de suite, c'est très important :

"The court may look to the documentation behind the formal judgment to determine what was decided for the purpose of res judicata."

Donc la cour admet qu'on peut regarder autre chose que l'ordre précis pour établir cette question de res judicata. Et donc nous allons faire cela - je demande qu'on aille maintenant à l'onglet quatre de mon compendium et cet onglet quatre contient des pages qui viennent de transcripts - ce qu'on appelle en anglais le court transcript de la session avec le protonotaire McLeod. Et ce court transcript je vais d'abord aller aux pages 68 et 69, telles quelles sont énumérées en haut de page de ce court transcript.

LE TRIBUNAL: Juste un instant. Un instant.

5 MR. DOODY: Your Honour, I'm in difficulty, this document is not anywhere in the materials that were filed in this motion. I wasn't there that day. My friend gave no notice of this. I have no idea what he's looking at. I don't have - and he doesn't have a copy for me.

10 MR. DEARDEN: Quite inappropriate and improper in my respectful submission for Mr. Rancourt doing this this way. And he knows it, Your Honour, it's not a matter of a self-represented, doesn't know the rules. He has legal advice all the time from Law Help and other people, he's got legal advice, he knows he wasn't allowed to do this, didn't have the courtesy to even give it to us before lunch when he
15 knew he had it, only makes one copy, so we both don't have it, but let me also say this to you, Your Honour, in answer to a question that you asked him, what - well, how did Mr. McLeod come up with paragraphs 19 through to 20? Because it was such
20 other relief as was requested, and he specifically told him that during that hearing. That was a further direction that I asked the Court to make in his paragraphs 19 and 20 - are not limited to just the re-attendance. The order says that because the
25 order is the refusals and you're going back and no one else is coming in, but if you look at the decision - the decision that is in issue is the public have no right to attend cross-examinations, they're private and he knows it and he's misleading you in not telling you that Master McLeod
30 specifically said to him at that hearing that in such other relief as the party may request, which

was in the notice of motion, which he's put before you, even though it isn't in his motion record, he's put that before you in tab two and you see it at page...

THE COURT: But this - this is a transcript...

MR. DEARDEN: ...two.

THE COURT: ...before Just....

MR. DEARDEN: Master McLeod.

THE COURT: Master McLeod and you were present at....

MR. DEARDEN: I was present and so my friend hasn't told you that - that when you asked him the question, well, how is it that we've got Master McLeod making the findings he made in paragraphs - just let me make sure I get the paragraphs right here, 19 and 20.

M. RANCOURT: Monsieur le Juge, est-ce que ça serait....

MR. DEARDEN: Please, please. 19, 20, 21, how that happened, it was because in paragraph six of the motion such further...relief as this honourable Court may deem just, and he deemed it just to tell Mr. Rancourt that the public had no right, it wasn't limited to just this - that particular re-attendance, it was at large. That's the....

THE COURT: Was that in his decision or is that in his reasons?

MR. DEARDEN: It's in his decision.

THE COURT: Well, okay.

MR. DEARDEN: The decision - it's - in my compendium, Your Honour, it's reasons for decision at tab two.

THE COURT: Okay, and that's clearly stated?

MR. DEARDEN: Pardon?

THE COURT: It's clearly stated in his reasons?

MR. DEARDEN: Paragraphs 19, 20, 21, yeah.

LE TRIBUNAL: Donc je vais retourner....

M. RANCOURT: Okay, alors - donc....

LE TRIBUNAL: Vous m'avez dit que c'était seulement que - l'ordonnance faisait référence spécifique à une date de ré-interrogatoire - répondre des questions, mais c'était dans les - les motifs pour la décision de protonotaire, est-ce que c'est le cas?

M. RANCOURT: Non, Monsieur le Juge. Non, Monsieur le Juge, ce n'est pas correct.

LE TRIBUNAL: Maître Dearden vient de dire...

M. RANCOURT: Oui.

LE TRIBUNAL: ...que dans ses motifs pour sa décision, qu'il a fait...

M. RANCOURT: Oui.

LE TRIBUNAL: ...il a décidé cette question.

M. RANCOURT: Donc j'aimerais clarifier....

LE TRIBUNAL: Est-ce qu'on devrait garder ces motifs?

M. RANCOURT: On peut les regarder...

LE TRIBUNAL: Y a-t-il des paragraphes...

M. RANCOURT: ...et ce que l'on va voir....

LE TRIBUNAL: Les paragraphes 19, 20 et 21.

M. RANCOURT: Absolument. J'ai pas de problème à les regarder. Je peux vous dire ce qu'il y a dans ces paragraphes.

LE TRIBUNAL: Oui.

M. RANCOURT: Il y a des - des énoncés généraux sur les bienfaits de la cour ouverte dans les interrogatoires, mais il n'y a pas une prononciation que sa décision va s'appliquer à toute la cause, il

n'y a pas ça. Ce sont des raisons générales sur les bienfaits d'avoir des personnes présente aux interrogatoires. C'est uniquement ça, et Monsieur le Juge, j'aimerais répondre à l'objection de monsieur Dearden, si vous permettez.

LE TRIBUNAL: C'est la question - c'est votre question....

M. RANCOURT: Oui.

LE TRIBUNAL: La décision du Juge McLeod c'est à quel - où est cette décision?

M. RANCOURT: Okay, on peut essayer de la trouver.

LE TRIBUNAL: Les motifs. Les motifs. Pas juste l'ordonnance - vous m'avez référé à l'ordonnance seulement et non pas ses motifs, c'est ça le point de....

M. RANCOURT: Oui, je comprends. Est-ce que pour....

LE TRIBUNAL: Ça c'était quel - quel onglet?

M. RANCOURT: Je ne sais pas. Je....

MR. DEARDEN: It's in tab two of my compendium that I handed to you before lunch, Your Honour, the reasons for decision of Master McLeod, it should be a 15 tab booklet.

M. RANCOURT: Donc....

LE TRIBUNAL: C'est des raisons assez - assez claires et directes.

M. RANCOURT: Oui. Et ce sont des prononciations, Monsieur le Juge, sur la question générale des bienfaits ou pas de la présence des personnes, mais l'ordre précis est pour une séance en particulier, et Monsieur le Juge, ce qui est très important c'est que j'ai posé précisément cette question-là au protonotaire McLeod, c'est dans le transcript, je

lui - je lui ai demandé, « Monsieur McLeod, est-ce que cette décision va s'appliquer dans toute l'action? » Il a dit « Non, uniquement pour les ré-examinations que je vais ordonner. »

MR. DEARDEN: Where does he say that?

M. RANCOURT: Et c'est pour ça que je veux lire le transcript, Monsieur le Juge.

LE TRIBUNAL: Vous me réferez direct à cet - où est-ce que c'est....

M. RANCOURT: Oui, alors si vous - si vous pouvez voir - si on va dans le transcript à la page 93, dans le transcript, c'est-à-dire l'onglet quatre de mon compendium, si vous - vous commencez avec l'avant dernier paragraphe, parce que le - je suis en train de parler et je dis :

"So I'm curious as to Master McLeod - I'm curious as to whether your decision about that, the public is not allowed in cross-examination on affidavits for motions, is that actually going to be part of the ruling, that statement?"

Monsieur - le protonotaire McLeod répond:

"Well, that's what Mr. Dearden is asking me to do and I'm...."

Et je dis:

"So that would be like..."

Et la cour répond:

"And I'm considering that."

Et je dis,

"So that would be like a general statement that would..."

Et la cour répond:

"I'm..."

Et je dis,

...establish that...

Et la cour dit:

"Not making any general statements, I am dealing with this cross-examination, if I order it to take place and you and who can be there."

Et je dis:

"I see."

Et la cour dit:

"The Court can certainly give discretion (sic) about that."

Et je dis - direction about that. Et je dis :

« Okay. »

À partir de là j'ai compris que sa décision ne s'appliquait qu'à la ré-examination précise qu'il allait ordonner ce jour-là. Ça me semble....

LE TRIBUNAL: C'est les décisions du tribunal - c'est toujours sur les faits particuliers, c'est toujours sur les faits dans une cause.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est parce que c'est pas en général, on fait affaire avec une cause, mais - est-ce que la même question a été décidée - c'est ça la question de res judicata, la même question - si ça été décidé sur évidemment d'autres faits parce que c'est pas les mêmes parties, ce n'est pas les mêmes circonstances, donc - donc est-ce que ces faits-là supportent une décision sur la base res judicata, issue estoppel, ce sont des....

M. RANCOURT: Oui. Alors Monsieur le Juge, je - nous faisons partie de la même action, c'est un continuum à l'intérieur de la même action avec les mêmes parties, et....

LE TRIBUNAL: Okay, mais votre point c'est que....

M. RANCOURT: Et - et j'ai...

LE TRIBUNAL: ...c'est pas une....

M. RANCOURT: Et j'ai....

LE TRIBUNAL: Mais ça c'est aussi des soumissions - des représentations, des plaidoiries que vous faisiez - c'est des plaidoiries que vous faisiez au protonotaire puis il rend sa décision. Donc c'est sa décision, ses motifs, c'est ça que....

M. RANCOURT: Oui. Monsieur le Juge, avec tout respect, j'ai explicitement demandé au protonotaire McLeod « Est-ce que votre décision va s'appliquer à toute l'action? » Il me répond « Non. » Il me répond « Ça va avoir affaire avec l'ordre que je vais donner aujourd'hui. Monsieur Dearden demande

pour la ré-examination, je vais répondre pour cet ordre-là. » Avec tout respect, je lui ai demandé spécifiquement ça, il m'a répondu exactement comme ça, et quand vous lisez l'ordre, pas la décision mais l'ordre, il m'apparaît très clair que l'ordre s'applique « to the cross-examination ». « The » ne peut qu'indiquer le paragraphe avant où il a ordonné des ré-examinations le 14 octobre. Ça me semble clair que ça ne peut pas vouloir dire autre chose que ça. Donc pendant la séance je lui ai posé la question et c'est pour ça que je n'ai pas fait appel à la décision, je comprenais que c'était une décision sur un cas précis, pour des dates de ré-examinations précis. Donc je lui ai demandé pendant la session et ensuite il a émis un ordre qui était exactement celle qu'il m'avait dit qu'il émettrait. Et monsieur Dearden a ce transcript depuis plus de cinq mois, Monsieur le Juge. C'est lui-même qui l'a commandé en urgence, il a commandé la première copie et il l'a en main depuis cinq mois ce transcript. Et la - je pense qu'il est clair que cette question était une question collatérale, qui n'avait pas été mentionnée dans la motion. Par exemple, si je peux montrer dans le transcript à quel point c'était quelque chose de collatéral, si vous permettez.

LE TRIBUNAL: C'est à vous.

M. RANCOURT: Oui.

LE TRIBUNAL: Vous avez vos temps, vous avez votre 45 minutes toujours.

M. RANCOURT: D'accord, alors voici - dans le même transcript, si on tourne à la page 68, donc c'est à l'onglet numéro quatre.

THE COURT: You're keeping track?

REGISTRAR OF THE COURT: Yes.

LE TRIBUNAL: Tu pourrais dire au....

GREFFIER DE LA COUR: Il vous reste 10 minutes.

M. RANCOURT: 10 minutes?

GREFFIER DE LA COUR: Oui, vous avez commencez à 2h15.

M. RANCOURT: Oui. Donc il me reste 11 minutes.

GREFFIER DE LA COUR: Oui, 11 minutes.

M. RANCOURT: Okay.

LE TRIBUNAL: C'est 12 - ça serait 12 pour - il faut qu'on respecte les temps si non....

M. RANCOURT: Donc si je vais à la page 68 de ce transcript, le registraire dit « Maybe if we could have just a five minute recess. » La cour dit « All right, so we're going to just take - take a - yes, Mr. Dearden. » Et là Mr. Dearden, à la page 68, il a déjà fait ses arguments, j'ai commence à répondre et pour la première fois il dit:

« Master, maybe I should let them know, in fairness, I have another point to address to you with respect to what you see at the... »

Et cetera, et cetera. C'est la première fois qu'il parle de cette plainte qu'il a qu'il y avait des gens présent à l'examination. Et en bas de page monsieur Dearden dit :

« After you heard from Mr. Rancourt. »

Parce que je suis dans le milieu de présenter ma soumission,

« So I would like – I would be five minutes to make a submission that members of the public don't go into a cross-examination in Cornell Catana's offices. »

Même monsieur Dearden parle du cas précis des examinations qu'il demande dans les bureaux de Catana. Ce n'est pas général et c'était complètement collatéral et vous voyez en milieu de page 69, je dis – un peu plus tard je dis :

« Master McLeod, I was not prepared to argue this point. »

Ça m'a pris complètement par surprise. Vous voyez à la ligne 20?

« I was not prepared to argue this point. »

Parce que j'ai eu aucune notice qu'on allait parler de ça. Et je pense que la jurisprudence est très claire que pour un cas qui est collatéral de ce type-là, on ne peut pas ensuite appliquer le principe de res judicata. J'ai déjà donné – j'ai déjà lu de l'autorité qui établit ce point-là.

Ça c'est l'élément de fait qui est contesté entre nous deux. Mes opposants veulent représenter la décision du protonotaire McLeod comme ayant été quelque chose de générale qui s'appliquait à toute l'action, alors que ce n'est pas consistant avec les faits.

Je pourrais maintenant tourner vers mon factum pour établir quelques faits supplémentaires. Alors je vais aller à la page quatre de mon factum, au paragraphe huit en bas de page. Il est clair dans les faits que le 6 septembre 2011 il y a des membres du public qui ont assisté à deux examinations hors cour. C'est aussi dans les faits à mon paragraphe neuf que monsieur Dearden s'est plaint, s'est objecté à leur présence, mais c'est aussi clair qu'il a continué et qu'il a fait normalement son examination. Ensuite là Master McLeod a fait sa décision le 6 octobre par rapport à la ré-examination à la date précise du 14 octobre. Ensuite j'ai soumis ma motion pour champerty. Un peu plus tard j'ai soumis ma motion pour la cour ouverte, c'est le point - paragraphe 14 de mon factum. C'était le 6 février 2012. Là quand j'ai essayé de déposer cette motion cour ouverte au registraire, on a refusé de la prendre et j'ai donné en évidence dans mon affidavit les raisons que le registraire a donné. Le registraire a dit :

« Je ne peux pas vous donner une date parce que vous êtes en gestion de cause, c'est le juge de gestion de cause qui doit assigner une date avant que je puisse accepter de recevoir votre motion. »

Très bien. Donc j'avais l'attente que le juge en gestion de cause allait me donner une date. Je me suis présenté le 6 février 2012 ayant demandé explicitement, avec des documents envoyés au juge au préalable, a list of issues et puis defendant's

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proposal time table for open court motion. J'ai
envoyé ces documents au juge, il les a reçus. Et
donc - et ensuite pendant la session du 8 février,
le Juge Beaudoin a refusé de céder une date pour
permettre à la motion d'être entendue. Il a fait
ceci sans avoir la notice de motion en main. Il
l'avait pas en main. Il a mal interprété ce qui
était demandé dans cette motion de cour ouverte. Il
a indiqué à plusieurs reprises que je demandais que
les gens puissent assister à des examens au
préalable, c'est-à-dire en anglais discovery, pas du
tout. Explicitement je demande pas ça, dans mon -
dans ma motion je dis explicitement que je ne
demande pas ça.

20
Alors je passe maintenant au paragraphe 18 où vous
allez voir l'échange entre moi-même et puis le Juge
Beaudoin qui refuse de céder des dates pour que ma
motion soit entendue. Il rejette que ma motion soit
entendue. Alors je dis :

« Monsieur le Juge, avec tout respect, je pense
que cette motion doit être entendue. »

25
Juge Beaudoin :

« Non. »

Je dis :

« Donc.... »

30
Il dit :

« Non. »

« Si je comprends bien, vous allez de façon rapide ne pas accepter que cette motion soit déposée? »

Le Juge Beaudoin :

« Bien non – bien non, effectivement. »

Un peu plus bas il répète :

« Non, non. »

Et ensuite un peu plus loin dans le transcript à la page 56 je dis :

« Mais Monsieur le Juge je ne pense pas que c'est approprié d'argumenter cette motion maintenant dans ces conditions ici. »

Il dit :

« Je ne retarde pas les interrogatoires pour ça. C'est une motion qui n'a pas lieu. »

Un peu plus loin, à la page 183 du transcript à la prochaine page, je dis :

« J'aimerais si c'est possible, si j'ai bien compris vous avez explicitement refusé que je puisse déposer ma motion par rapport à la cour ouverte? »

Le Juge Beaudoin dit :

« Uhm. »

Je dis :

« Donc, j'aimerais que ça apparaisse dans
le.... »

Le Juge Beaudoin dit :

« Oui, oui. »

Je dis :

« Dans la règle. »

Il dit :

« Okay. »

Donc c'était clair c'était un refus absolu de
céduler des dates pour que cette motion puisse être
entendue. En plus il y a des évidences que le juge
a mal compris le but de ma motion pour cour ouverte.
Par exemple il dit dans le transcript à la page 105,
il dit dans ce petit segment que j'ai là, en fin de
ligne, il dit:

"And I would reject this motion for open court
if not being - it not being applicable to cross-
examinations or examinations for discovery."

LE TRIBUNAL: C'était quel - quel paragraphe?

M. RANCOURT: Alors là on est au paragraphe 19 de mon
factum. Et je suis en train de lire ce que le Juge

Beaudoin a dit à la page 105 du factum. Il dit explicitement :

"It not being applicable to cross-examinations or examinations for discovery."

Et il a répété ça une autre fois à la page 58 aux lignes 21 à 25, il a encore répété cette notion très précise qu'il avait - il avait la mé-conception que je demandais que les gens puissent venir aux discoveries, alors que c'est pas du tout le cas. D'ailleurs dans mon notice of motion, si vous regardez le paragraphe 20, je dis explicitement au paragraphe six de ma notice of motion, je dis :

"Out of Court examinations of witnesses and deponents or affidavits on motions are not subject...undertaking, rule 30, and thus fundamentally differ from examinations for discovery. The defendant does not challenge the examinations for discovery - are not subject to the open Court principle."

Mais il avait pas cette notice en main et il l'avait pas lu et donc il puisse être mé-dirigé par rapport à son contenu.

Ensuite, le Juge - deux minutes. On m'informe qu'il me reste juste deux minutes et j'aurais eu besoin de peut-être cinq ou 10 minutes de plus.

LE TRIBUNAL: Mais cinq minutes max.

M. RANCOURT: Okay. Alors je vais essayer de chercher là....

LE TRIBUNAL: Vous pouvez me référer à des paragraphes dans votre factum.

M. RANCOURT: Okay.

LE TRIBUNAL: Si vous avez un point, je veux dire....

M. RANCOURT: Okay.

LE TRIBUNAL: Les détails sont ici pour....

M. RANCOURT: Okay, donc....

LE TRIBUNAL: J'ai - j'ai lis votre factum.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc...

M. RANCOURT: D'accord.

LE TRIBUNAL: ...vous pouvez me référer à regarder ce paragraphe ici ou ce paragraphe-là.

M. RANCOURT: Oui, alors je vais - je vais faire ça. Je vais passer à la section qui s'intitule issues and the law. Et c'est à la page neuf de mon factum. Et je vous réfère au paragraphe 23 qui s'intitule The Defendant's Open Court Motion is on a Substantive Issue, un enjeu de substance. Alors il est - je fais le point qu'en loi il est clair que cette motion était sur un enjeu de substance.

Une autre démonstration que c'est un enjeu de substance est dans le fait que cette même - ce même type de motion cour ouverte a été argumenté en détail devant la cour de l'Ontario dans le passé pour que les membres du public puissent accéder aux examinations hors cour. Et ça c'est dans la décision R. v. Gordon, c'est au paragraphe donc 24 de mon factum. Et vous allez voir dans cette décision, Monsieur le Juge, que la question cour ouverte a été débattue sérieusement devant le juge. Et la conclusion de ce juge était la conclusion

qu'on pourrait s'attendre parce que la Couronne essayait de faire accepter....

LE TRIBUNAL: Mais la décision Gordon, ça c'est une décision criminelle.

M. RANCOURT: Oui, exact.

LE TRIBUNAL: Ça c'est pas....

M. RANCOURT: C'est une décision criminelle, mais c'était....

LE TRIBUNAL: Qui parle d'un procès, c'est pas une question de...

M. RANCOURT: C'est différent. C'est différent, mais c'était une....

LE TRIBUNAL: ...contre-interrogatoire sur des affidavits, c'est pas ça.

M. RANCOURT: C'était - c'était - il y a des différences et il y a des analogies. L'analogie était que c'était un contre-examen sur un affidavit et c'était hors cour. Donc sur ce point-là, il y a une ressemblance, mais c'était sous la loi criminelle effectivement, Monsieur le Juge. Et - mais la question à savoir si le principe de la cour ouverte s'applique a été débattue dans cette - dans cette cause. Je mentionne ça uniquement pour montrer que c'est une question sérieuse avec substance. Et le juge dans cette cause-là a décidé ce qu'on aurait pu s'attendre parce que la Couronne essayait de faire accepter l'idée que la police qui faisait une investigation avec voice recorder en main pour reconnaître la voix des criminels, voulait se faire passer comme membre du public, alors c'est pas surprenant que le juge ait établi que non dans ce cas-là, on ne peut pas accepter que la police

5 puisse être un membre du public. Donc on est pas surpris par la réponse négative dans cette cause précise. Je mentionne la cause uniquement pour vous signaler que cette question de cour ouverte dans des interrogatoires sur affidavit hors cour est une question sérieuse avec substance.

10 En plus je signale aux paragraphes 25, 26, 27, que les règles sont telles – les règles de procédure devant la cour sont telles que quand on est en gestion de cause on ne perd pas notre droit d'amener des motions. Il est prévu qu'on peut amener des motions quand on est en gestion de cause. Il est explicitement prévu. Et en plus, les règlements 15 77.085 – alors je suis au paragraphe 27, disent quels sont les pouvoirs d'un juge qui agit pendant une conférence de gestion de cause et ses pouvoirs n'incluent pas de ne pas permettre une motion pour qu'elle soit déposée et que les dates soient 20 admises, ça n'incluse pas ça. Les pouvoirs n'incluent pas cette question-là.

25 Et aussi la jurisprudence est telle que quand on a une motion sur un enjeu substantiel, que la jurisprudence a explicitement dit qu'un juge en gestion de cause pendant une conférence de gestion de cause ne peut pas empêcher une telle motion d'être présentée et que des dates soient soumises. Et là je vous pointe à peut-être la décision la plus 30 importante et la plus pertinente dans la cause actuelle, dans la motion d'aujourd'hui et c'est Lauer v. Stasiuk (ph) 2006, Colombie Britannique,

5 Court d'Appel. Et là j'aimerais - on pourrait regarder des paragraphes clés de cette cause, je pense que je l'ai mentionnée plus tôt aujourd'hui. Et donc cette cause est très claire - un juge dans une situation comme ça ne peut pas bloquer les droits procéduraux d'un intervenant qui veut amener une motion.

10 Alors les - je reconnais là que je manque de temps, mais les autres éléments de mon factum je vais juste dire ce que c'est sans les présenter.

LE TRIBUNAL: Oui.

M. RANCOURT: J'ai élaboré le test for granting leave to appeal.

15 LE TRIBUNAL: Oui, je suis au courant de ce test.

M. RANCOURT: Oui. Oui, je suis au courant que vous êtes au courant, Monsieur le Juge.

LE TRIBUNAL: Oui.

20 M. RANCOURT: Et donc j'ai élaboré ça et j'ai démontré dans ce cas - dans ce cas précis à quel point tous les éléments de ce test sont rencontrés. Je n'ai pas le temps de le présenter maintenant mais je l'ai - j'ai fait la branche A, j'ai fait la branche B, sur la question d'aujourd'hui qui est une autorisation pour interjeter appel par rapport à une motion de cour ouverte, il y a aucun doute, à mon sens, j'ai fait - j'ai fait l'argument légal que tous les tests sont rencontrés. Maintenant, mes opposants vont dire que les tests ne sont pas rencontrés pour la motion à cour ouverte, mais ce n'est pas la motion à cour ouverte. C'est une motion pour autorisation pour intervenir. Et par

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rapport à cette motion, le test est complètement satisfait.

Et donc juste une dernière chose. Je veux aller à mon affidavit pour cette motion, parce que je veux établir qu'il y a eu un - que mes droits fondamentaux que la justice naturelle n'a pas été respectée dans mon cas. Et alors je veux aller à mon affidavit, je veux aller au paragraphe 31, donc si on va à mon motion record, l'affidavit c'est l'onglet numéro deux, et je vais au paragraphe 31, et j'ai dit en affidavit très clairement :

« On February 6th, the registrar in the person of Timothy Wade Lupid (sic)..."

A refuse d'accepter ma cause, il a donné la réponse suivante - ça c'est des faits. Ces faits ne sont pas contestés, Monsieur le Juge. Ensuite je passe au paragraphe 37 :

"When I attended the February 8th case conference, I expressed the clear expectation that my open Court motion would be scheduled as part of the case management schedule being established that day. I expected that the filing of my notice of motion would be followed by a possible supporting affidavit if needed, see exhibit I, a motion record and a factum."

Donc j'avais l'attente précise qu'on puisse faire ça. C'est dans les faits et on a - ce fait n'est pas contesté.

Ensuite, si on passe au paragraphe 39:

5 "At the February 8th case conference convened by Judge Beaudoin, Judge Beaudoin :
a) refused to accept from me a copy of my open Court motion, notice of motion;
b) did not permit me to make an oral presentation about my open Court motion;
c) refused that any date could be scheduled for my open Court motion;
d) accepted a copy of a prior Master's order and/or reasons for decision provided by the other party whereas I was not given a copy of the documents handed to the judge; and
10 e) superficially justified non assigning dates for my open Court motion without applying the relevant Dagenais Mintuk test for legal procedure openness."

15 Alors la Cour Suprême du Canada exige que dans toute question où l'ouverture des procédures de la cour sont mis en question, que le juge doit appliquer le test Dagenais Mintuk et c'est un test élaboré pour ces questions-là. Ce test n'a pas été appliqué. Ces faits ne sont pas contestés, Monsieur le Juge. Et en fin, et mon dernier paragraphe c'est le
20 paragraphe 40 de mon affidavit :

25 « At the February 8th case conference and in the judge's endorsement, his endorsement at case conference, Judge Beaudoin justified not assigning case management scheduled dates for my open Court motion by stating that examinations for discovery are not subject to the open Court principle. I never stated or indicated that the open Court principle should apply to examinations for discovery and I state that in my notice of motion."

30 Et donc j'ai déjà lu ce paragraphe. Mais ça ce sont les évidences qui sont devant vous.

Donc pour conclure – pour conclure donc, Monsieur le Juge....

LE TRIBUNAL: Selon vous c'est une erreur ou il a mal compris votre – votre session de représentation.

M. RANCOURT: Absolument.

LE TRIBUNAL: Okay, je pense j'ai – dans la dernière....

M. RANCOURT: Mon dernier point je pense le point le plus important c'est que je crois que la loi et les règles me permettent de mettre de l'avant une motion et qu'elle soit entendue sur ses mérites. Je n'ai jamais eu la chance que cette motion cour ouverte puisse être entendue sur ses mérites et je crois que c'était une contrainte de mes droits naturels de m'empêcher de mettre cette motion de l'avant.

LE TRIBUNAL: Okay, merci.

M. RANCOURT: Merci.

THE COURT: Maître – Mr. Dearden. We'll finish off, we'll do yours, take a break and come back, Mr. Doody, unless....

MR. DOODY: That's fine, Your Honour.

THE COURT: Reply – vous aurez votre réplique.

M. RANCOURT: Si je peux suggérer – si je comprends bien, monsieur Doody va – va prendre que 15 minutes. Je préférerais le break après monsieur Doody comme ça ça va me donner la chance de récupérer mes notes et d'organiser mes notes.

LE TRIBUNAL: Okay. Bon bien on verra – on verra si tout le monde sont – peut-être qu'ils ont besoin d'une petite pause. We'll see how long Mr. Dearden is.

5 MR. DEARDEN: Your Honour, just for the record, I'm
not sure this matter - but we'll get it on the
record anyway that there's a case conference before
Justice Beaudoin on April 2nd and one of the issues
is an order that there - the translation or
interpretation be included in the transcripts, so
I'm assuming that everything that we're doing today
would be subject to that order, although we're -
we're dealing with it on Monday.

10 THE COURT: So whatever order Justice Beaudoin or
Master - whoever has made orders dealing with the
translation, you want copies?

15 MR. DEARDEN: No, it's an order - it's actually an
order under section 11 of the regulation of the
Courts of Justice Act.

THE COURT: Right. Right.

MR. DEARDEN: That you can include in the transcript
the actual interpretation.

THE COURT: Right.

20 MR. DEARDEN: So the official version of the
evidence...

THE COURT: Yes.

MR. DEARDEN: ...would be whatever language the
person spoke.

25 THE COURT: The person spoke, yes.

MR. DEARDEN: Yes.

THE COURT: So we would follow that.

MR. DEARDEN: We would follow that, but...

THE COURT: In this proceeding.

30 MR. DEARDEN: ...I'm just indicating we're seeking
that order Monday, I don't think there's going to be
an issue with Mr. Rancourt.

THE COURT: You're seeking that order Monday?

MR. DEARDEN: April 2nd, yes, case conference before Justice Beaudoin, yes.

THE COURT: So I don't know - is it on consent?

M. RANCOURT: Monsieur....

THE COURT: You're asking me to grant that now instead of going to the case....

MR. DEARDEN: No, no, I'm not. I'm just putting on the record it's going to be retroactive if we get the order.

THE COURT: Oh, that this will apply to these proceedings...

MR. DEARDEN: Yes, yes.

THE COURT: ...as well. Well, I can say that they will apply for this proceeding.

MR. DEARDEN: Okay.

M. RANCOURT: Monsieur le Juge...

THE COURT: So that will be done....

M. RANCOURT: ...avant de prendre cette décision...

LE TRIBUNAL: Oui.

M. RANCOURT: ...je veux dire que moi je m'objecte à ce que ça soit rétroactif et je m'objecte à l'ordre qu'il souhaite argumenter lundi, donc on a à débattre ça lundi.

LE TRIBUNAL: Mais question - moi les affaires qui passent lundi ça c'est...

M. RANCOURT: Oui.

LE TRIBUNAL: ...les problèmes de quelqu'un d'autre.

M. RANCOURT: Oui.

THE COURT: But....

M. RANCOURT: C'est pas pertinent pour aujourd'hui.

5 LE TRIBUNAL: Mais pour aujourd'hui c'est - on a des interprètes, on a les deux - cette - cette demande doit s'appliquer pour aujourd'hui. Je ne sais pas qu'est-ce qui va se passer lundi prochain, ça c'est quelqu'un d'autre qui va décider, but - pour aujourd'hui vous êtes d'accord que - the - la langue du celui qui fait les représentations sera les transcriptions officielles mettons - la copie de la traduction va être inclus dans la transcription, 10 mais ça sera une traduction....

15 M. RANCOURT: Monsieur le Juge, je trouve ça dommage que monsieur Dearden a compliqué ce qui se passe aujourd'hui avec cette question, mais pour répondre courtement, je suis pas d'accord comme tel, parce que la règle dit très clairement que les interprétations ne font pas parties de transcript officiel, mais qu'on peut chercher un ordre à défaire ça, et monsieur Dearden cherche cet ordre- 20 là, moi je l'oppose pour des raisons que je vais expliquer lundi. Et donc j'aimerais mieux qu'on ne complique pas cette question - avec cette question aujourd'hui.

25 THE COURT: So I'm not understanding the dispute actually really.

30 MR. DEARDEN: It's not me complicating it, it's him. All I'm saying - you have to get an order, Your Honour, if you want the transcript to have...

THE COURT: To include both.

MR. DEARDEN: ...the translation in it.

THE COURT: Yes.

MR. DEARDEN: And - so I have to get an order, and there should be zero concern on his part for this

other than – because I’m asking for it, he’s
opposing it. The – there’s no doubt that the
official evidence, testimony will be the language of
what the person speaks, not...

5 THE COURT: What is spoken.

MR. DEARDEN: ...it’s not the translation.

THE COURT: Not the translation.

MR. DEARDEN: But I need – I need it to get the
transcript transcribed so that the interpretation is
in it.

THE COURT: Knows how to do it.

MR. DEARDEN: I need your....

THE COURT: Okay. T’as-tu une objection à ça, que ce
soit tout inclus dans la transcription?

15 M. RANCOURT: Monsieur le Juge, pour raccourcir ce
qui se passe aujourd’hui...

LE TRIBUNAL: Oui.

M. RANCOURT: ...je vais simplement pas m’objecter
pour aujourd’hui.

20 LE TRIBUNAL: Okay.

M. RANCOURT: Mais lundi j’ai des arguments à
faire...

LE TRIBUNAL: Okay.

M. RANCOURT: ...qui sont considérables.

25 THE COURT: Okay. So yes, the order will be granted
for today, but Mr. Rancourt is reserving his right
to oppose this request on Monday.

MR. DEARDEN: Okay. We have – we have a draft order
before Justice Beaudoin, Your Honour, and Mr.

30 Rancourt has a draft order and we’re so close it’s
not funny, what he’s going to object to is beyond

me, why he does that is beyond me, but I will begin my points of argument if I could, Your Honour...

THE COURT: Okay.

MR. DEARDEN: ...on his leave.

THE COURT: I will leave - as I said in French, I will leave what's happening on Monday to whoever is dealing with the matter on Monday.

MR. DEARDEN: Justice Beaudoin.

THE COURT: Unless it's on consent here, I can sign an order for you and get - and save you some time, but I would need the consent.

MR. DEARDEN: I think this....

THE COURT: I'm not going to engage in that really today.

MR. DEARDEN: No, no.

THE COURT: I want to deal with what I have to deal with. And if you - I don't know exactly - I don't know what your other dispute is on the order.

MR. DEARDEN: You know what? Neither do I, because there shouldn't be one. But as far as today is concerned, Your Honour, the interpretation can be included in the...

THE COURT: Yes.

MR. DEARDEN: ...transcript.

THE COURT: Yes, I made that order.

MR. DEARDEN: Okay, thank you.

THE COURT: And so ordered.

MR. DEARDEN: So Your Honour, on the leave my outline of argument for the leave application of Mr.

Rancourt is firstly going to deal with the 62.02(4) test for granting leave, which is an onerous warrant to fulfil. The second point I'm going to make is to

5 look at what Justice Beaudoin really did decide, the
the defendant is seeking to appeal. And my
submission on that, Your Honour, is that Justice
Beaudoin did not assign a date for this so called
open Court motion because the issue – the issue of
whether the public had a right to attend an out of
Court examination had already been decided by Master
McLeod five months ago. The issue of whether the
public had a right to attend an out of Court
10 examination already decided and he didn't appeal
Master McLeod's decision or order.

15 THE COURT: Yes, assuming that's correct, let's
assume that Master McLeod decided the issue in his –
does Justice Beaudoin have authority at a case
conference, even if that may be the ultimate result,
let's say....

MR. DEARDEN: And I'm going to deal with that, Your
Honour.

20 THE COURT: Can he refuse to schedule a motion at a
case conference on a matter that's already been
decided, let's say by the Supreme Court of Canada or
by whoever?

MR. DEARDEN: I'm going to deal with that, Your
Honour.

25 THE COURT: That would be...

MR. DEARDEN: But the quick answer....

THE COURT: ...the question I think. I guess that's
the....

MR. DEARDEN: Quick answer to you...

30 THE COURT: Yes.

MR. DEARDEN: ...one, as a case management judge he
can make procedural decisions in res judicata

5 decision, whether the issue estoppel, collateral
attack or abuse of process, which are the common law
doctrines I'm going to deal with in argument, it's
procedural. You cannot let somebody re-litigate an
issue and not assign a day is something that falls
squarely in the powers of a case management judge,
but also I'm going to take you to a decision that
says there's inherent jurisdiction of a case
management judge to make an order like this. It's
10 procedural.

THE COURT: Because I think that's the issue really
is - the nub of the issue.

15 MR. DEARDEN: So my third point, Your Honour, after I
deal with - well, what did Justice Beaudoin really
do that my - that Mr. Rancourt is trying to seek
leave on, is to go to the - there are three common
law doctrines that prohibit the defendant from re-
litigating an issue that was decided by Master
McLeod. The first common law doctrine is issue
20 estoppel. The second common law doctrine is
collateral attack. And the third is abuse of
process.

25 And you can decide this leave motion, Your Honour,
on any one of those common law doctrines. You don't
need all three, you just need to decide that one of
them existed and that's what Justice Beaudoin
decided in preventing a re-litigation of an issue
decided and the leave application would be
30 dismissed. But I'll also take you to the open Court
principle not applying to out of Court examinations,
that's my fourth point. Because in my submission,

it's a patently absurd argument to say the open Court principle applies to out of Court examinations. And I have case law for you that they don't, that the open Court principle doesn't apply.

And then lastly, Your Honour, on the allegation that there was a breach of natural justice on the part of Justice Beaudoin, in my submission, the defendant has misrepresented to this Court that Justice Beaudoin didn't know what the open Court motion was about and thought it was an examination for discovery. I'll take you through paragraph three of his endorsement and we have in the factum what really was said and discussed at the February 8th case conference that makes it crystal clear that Justice Beaudoin knew that Mr. Rancourt was trying to get the public to attend cross-examinations on affidavits of Allan Rock, Robert Giroux, the chair of the board and Joanne St. Lewis, crystal clear. He wasn't under any misrepresentation at all and it troubles me to hear Mr. Rancourt suggesting that - not suggesting, that he's actually alleging it against a Superior Court judge. There was zero breach of natural justice, in my respectful submission. So those are my points, Your Honour.

The first point is rule 62.024, I needn't repeat that rule for you, it's at tab seven of the compendium, so I'm going to be looking at the compendium closely now - or working with the compendium closely, Your Honour. So that's at 15 -

tab - green book, compendium of argument of
Professor St. Lewis. I have a spare.

THE COURT: It's possible I've got two now of your
outline of arguments - outline of arguments. So
I've got two of those.

MR. DEARDEN: The important thing you'll need is my
compendium.

THE COURT: And here - hold on. I have your - I
think I have your compendium. Compendium. Yes, I
have your compendium.

MR. DEARDEN: Okay.

THE COURT: I don't need two of those. But I do need
one of these though.

MR. DEARDEN: So the rule you'll find at tab seven,
Your Honour, and - Mr. Rancourt has to convince you
that there's a conflicting decision by another judge
and it's desirable to grant leave or there's good
reason to doubt the correctness of the order and
that the proposed appeal involves...leave should be
granted. Now, you'll see at tab eight a decision of
Justice Belami [ph] in Bell Express View, tab eight
of the compendium in the first paragraph, Justice
Belami [ph] finds that the test for granting leave
to appeal to the Divisional Court from interlocutory
order is an onerous one. And our submission is that
test has not been met. That burden has not been
met.

Now, what did Justice Beaudoin decide? He refused
to assign a date to...within the jurisdiction of the
case management judge, it's what they do, they
assign dates or they don't assign dates. And what

he did was he didn't allow the defendant to re-litigate an issue that Master McLeod had already decided. And I would ask you, Your Honour, if you could turn to tab three or tab one of the compendium, which is Master - or Justice Beaudoin's endorsement at case conference. Paragraph three, the endorsement notes that:

"The defendant also expressed an intention to bring an open Court motion that would allow any member of the public or media to attend at any examinations for discovery. For this reason he expressed the view that this motion should be heard before any cross-examinations or discoveries are scheduled to take place. This issue has been dealt with before. This issue has been dealt with before. I conclude that this principle does not apply to out of Court examinations and I adopt the reasoning of Master McLeod in his order of October 6th, which order has not been appealed. There is no right for the public to attend an examination out of Court at the office of the special examiner or Court reporter."

That's what Master - or Justice Beaudoin decided, is the issue has been dealt with before. What issue? That is the issue of the public don't have a right to attend an examination out of Court at the office of the special examiner or Court reporter. What Master McLeod decided, that's at tab two of the compendium. Tab two, Your Honour, paragraphs 19, 20 and 21 deals with this issue.

I asked for clear direction as to who may attend at the cross-examination. The need for that is

demonstrated by the exhibit at page 154 of the motion record.

5 "Certain individuals who are not parties to the actions again attended at that cross-examination and refused to leave notwithstanding Mr. Dearden's objections. One of these observers then posted comments on the internet describing the cross-examination and attributed unethical behaviour to Mr. Dearden while also suggesting the plaintiff herself was somehow associated with evidence of...the university. Mr. Rancourt objects to such direction on the basis of the open Court principle, in that he is misguided. Cross-examination or discovery does not take place in open Court. Although it does take place under Court supervision. It is only once a transcript or portions of the transcript are tendered in evidence does it become part of the Court record. Motion records and exhibits at 10 trial are part of the Court record - Court hearings, such as this motion are held in open Court, though that was not always the case. Prior to the adoption of the new rules, chambers motion were not considered to be in open Court or on the record. In any event, it is quite clear that there is no right for the public to attend an examination out of Court at the office of the special examiner or Court reporter."

15 That's exactly what Justice Beaudoin held in paragraph three of his endorsement. That was the issue. And then he goes on to hold:

20 "Even were that not the case however, the Court could give direction about the conduct of such examinations."

25 And paragraph 21 then says:

"There will be a follow-up cross, no one but the parties and their lawyers and the reporter may be in attendance unless otherwise agreed."

Paragraph 21 is what you see in paragraph seven of the order, Your Honour. But point blank, Justice - or Master McLeod was dealing with this issue about people, members of the public attending a cross-examination and his finding in paragraph 20, that cross-examination or discovery does not take place in open Court, and his further statement in paragraph 20, it's quite clear that there is no right for the public to attend an examination out of Court at the office of the special examiner or Court reporter is not restricted to the October 14th re-attendance at cross-examination as Mr. Rancourt would have you believe. Those are general findings on the issue of can a member of the public be in a cross. And the finding was no, and that's exactly what Justice Beaudoin held when he said the issue had been dealt with before, and never appealed. And he almost - I haven't compared it word for word, but it's almost the same wording, there's no right to the public to attend - for the public to attend an examination out of Court at the office of the special examiner or Court reporter. That's what Master McLeod held at paragraph 20. So he wasn't specific whatsoever, and - and I wanted to grasp - I too object what Mr. Doody did that we get ambushed with the transcript of the October 6th appearance before Master McLeod, because I haven't had a chance to read it thoroughly, but I'm going to hand the Court a copy of the transcript of October 6th, 2011,

and ask if Your Honour could turn to page 87. So at page 87 of this transcript, Your Honour, and I'm looking at about line 22, Master McLeod says:

5 "Okay, and then I wouldn't have thought it needed any clarification, I mean I think it's pretty clear. I'll hear both parties on this as well, but that the only persons that have a right to attend at a cross-examination, which is not in Court, and that's the whole, it's not the public hearing, are the parties and the witnesses obviously and their counsel."

10 And I say:

15 "I tried to convey that in emails prior to the cross-examination, at the outset of the cross-examination to both Mr. Rancourt and the two individuals that are sitting there."

And then if you look at the bottom of the page, I'm now on page 88, Your Honour, at the bottom, Master McLeod says:

20 "I mean it's quite clear and I'm surprised that the reporting service didn't support you in that, but in any event it means surely there's no dispute about that."

25 And if you then turn the page, Your Honour, and I'm looking at - where they're going down to line 25. You see I defend Cornell Catana:

30 "You know, what are we going to do? Call the police? Walk out and waste more time and money? So I warned Mr. Rancourt - what you're doing - your comments are going to be used against you as malice and aggravated damages."

But I say at line 26,

5 "Because if they show up or they just show up again or try to show up again at any - at any cross-examination I want to site them for contempt and we'd at least have an order that would point to, notwithstanding that it's trite that the public don't attend cross-examinations."

10 So the - when I ask that a term be added to the order to have these people re-attend for cross-examination, we were discussing fully that this was - like the general principle, the trite principle that the public do not attend a cross-examination, that it's just the parties and their lawyers. And Mr. Rancourt knew that and he never appealed the
15 decision of Master McLeod, never appealed and nor did I know and I'm absolutely blindsided Your Honour with hearing the submissions I just heard, that Mr. Rancourt was only - you know, expecting that that order would be for that cross-examination, imagine the absurdity of that. So every cross-examination, and there's going to be quite a few in this case, you have to then re-apply to the Court for a
20 direction, put it as a term to keep the public out of this cross-examination, that's absolutely absurd. He never said he was going to do that, he was going to come at it again, no. It wasn't Your Honour until five months went by, okay, five months go by, there was no notice to me that the next cross I'm going to bring the public in, but two days before the February 8th case conference before Justice Beaudoin, the - Mr. Rancourt serves his so called
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open Court motion, which you'll find at tab four of the - of the compendium. And he's lead - trying to lead you to believe that Master McLeod didn't know or Justice Beaudoin rather didn't know what was going on, it was an open Court motion and at tab five of the compendium you see that Mr. Rancourt had provided a list of issues to be dealt with at that case conference. And the third one on his list is a schedule for the open Court motion. And he puts a schedule, if you flip the page at tab five of the compendium, you have a timetable for his open Court motion. There's no doubt that Justice Beaudoin knew what the open Court motion was for; it was for the public to come into cross-examinations. And I'll get into this a little further when I deal with the natural justice argument where Mr. Rancourt has suggested - has argued that Justice Beaudoin was under the wrong impression about his - what his motion was about, which it's so obviously clear from paragraph three of the endorsement that he knew it was cross-examination, and it was just inadvertence that he referred to in examination for discovery and throughout the transcript, which I'm going to take you to, on the February 8th proceeding, Justice Beaudoin specifically mentions cross-examinations several times. And of course Mr. Rancourt wanted to be crossing the U of O witnesses that are only involved in the champerty motion and it was only a cross-examination, there was no examination for discovery...at all with the University of Ottawa witnesses, it was only cross-examination and Master McLeod's order was only about a cross-examination

and that's what Justice Beaudoin adopted, was Master McLeod's reasons, which dealt only with the cross-examination.

5 So in sum on my second point, Your Honour, I say it was - to the Court that the issue that Master McLeod had dealt with and the issue that Justice Beaudoin had dealt with at the case conference was the issue of whether the public had a right to attend the
10 cross-examination.

And I'm submitting that the motion for leave can be dismissed on one of three common law doctrines, issue estoppel, collateral attack or abuse of
15 process, and they're all succinctly set out in tab nine of the compendium, Your Honour, which contains extracts from the City of Toronto and QP case of the Supreme Court of Canada.

20 So tab nine, Your Honour, of the compendium. So it starts at page 94, paragraph 22, the common law doctrines:

25 "Much consideration was given in the decisions below to three related common law doctrines of issue estoppel, abuse of process and collateral attack."

And I'm dropping down towards the bottom of the page, Your Honour, the last part of the paragraph
30 22:

"I stress at the outset that these common law doctrines are each...takes us more than one doctrine in support of a particular outcome."

5 You don't need more than one, you only need one to deny leave, Your Honour. Issue estoppel is set out at paragraph 23 of the City of Toronto case. It's a branch of res judicata, the other branch being cause of action estoppel:

10 "Which precludes the re-litigation of issues previously decided in Court in another proceeding for issue estoppel to be successfully invoked, three conditions must be met: 1) the issue must be the same as the one decided in the prior decision."

15 That's what I'm submitting, Your Honour, that Master McLeod decided and Justice Beaudoin did as well, and I'm happy to say he didn't, because he actually adopted the reasons of Master McLeod in paragraph three of his endorsement that said the public had no right to attend a cross-examination.

20 The second condition is the prior judicial decision must have been final. It is. Master McLeod's decision was never appealed. And the parties to both this proceeding must be the same. They are. Professor St. Lewis and Mr. Rancourt.

25 At the next page, Your Honour - so that's issue estoppel. The next page deals with collateral attack, which Mr. Doody will be dealing with. And if you go to page 101, paragraph 35 of the City of

Toronto case, it deals with abuse of process towards the bottom of the page. So page....

THE COURT: Is that page 109?

MR. DEARDEN: 101.

THE COURT: 101.

MR. DEARDEN: Paragraph 35 under the heading abuse of process. The first line is - the first sentence is:

"Judges have an inherent and residual discretion to prevent an abuse of Court's process."

In my respectful submission, the case management judge has inherent power and discretion to prevent an abuse of the Court's process. And if you go over to page 103, Your Honour, at the top of the page, dealing with the Can-Am (ph) decision, which I'm going to get to in a second,

"One circumstance in which abuse of process can apply is where the litigation before the Court is found to be in essence an attempt to re-litigate a claim which the Court has already determined and as Justice Goudge comments indicate...apply the doctrine of abuse of process to preclude re-litigation in circumstances where the strict requirements of this issue estoppel are not met."

Well, in my submissions they are met here, but even if they aren't, you could use the abuse of process doctrine, Your Honour, to reject this leave application. So to continue that quote of:

"...to preclude re-litigation in circumstances where the strict requirements of issue estoppel are not met, but we're allowing a litigation to

proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice."

5 It just can't be, Your Honour, that I would have to constantly apply to the Court to prevent people - supporters of Mr. Rancourt like Mr. Hickey from attending each and every cross-examination that Mr. Rancourt decides he wants his supporters to attend. That isn't judicial economy and it's certainly not finality and it certainly wastes a lot of time. That issue was dealt with point blank by Master McLeod and point blank by Justice Beaudoin not letting that re-litigation happen again.

10 And paragraph 42 of the same case, Your Honour, Justice Arbour holds in the middle of that page in paragraph 42, page 105 - 105:

15 "The attraction of the doctrine of abuse of process is that it's unencumbered by the specific requirements of res judicata while offering the discretion to prevent re-litigation essentially for the purpose of preserving the integrity of the Court's process."

20 And if you just flip over to page 107, Your Honour, which deals with when a decision is final and binding, 107, it's the last part of paragraph 46 - it's - so I'm looking at the third last sentence, Your Honour:

25 "Indeed reviewability is an important aspect of finality. A decision is final and binding on the parties only when all available reviews have

been exhausted or abandoned. What is improper is to attempt to impeach a judicial finding by the impermissible route of re-litigation in a different forum. Therefore motive is of little or no import."

5 And this is what Justice Beaudoin was not going to allow to happen again. He wasn't going to assign a date for a motion on an issue that had already been decided. It was impermissible re-litigation that case management judge has power, inherent
10 jurisdiction and because res judicata is a procedural, not a substantive finding, he had that right....

THE COURT: Do you have something saying res judicata is procedural not substantive?

15 MR. DEARDEN: Yes.

THE COURT: Is that....

MR. DEARDEN: And there's - you've got a passage in the factum, Your Honour, paragraph 23 of the factum - my factum, it's a quote:

20 "It's a rule of evidence, not a rule of substantive law."

THE COURT: Is that paragraph 23?

25 MR. DEARDEN: 23 of the factum. Where we submit that in declining to permit the defendant to re-litigate an issue already decided by Master McLeod. Justice Beaudoin simply applied the common law rule of estoppel by res judicata, the common law rule of estoppel by res judicata is a rule of evidence and
30 not a rule of substantive law according to the law

of evidence in Canada, and we quote from Sopinka in Letterman [ph] where you see at 19.54,

5 "Although it's sometimes referred to as a rule
of substantive law without a view...rule of
evidence, essentially the party against
whom...or issue that was decided was
estoppel...offering evidence to contradict that
result."

10 And there's a Frank Comeau [ph] decision, Your
Honour, which is - I haven't reproduced in - in my
factum, but it is in my friend Mr. Doody's factum,
tab three. No. Where is that? Tab 10. Tab 10.
Comeau [ph] decision.

15 THE COURT: Tab 10 of Mr. Doody....

MR. DEARDEN: No, it won't be that because - no,
where am I? I'll find it at the break, Your Honour,
but I've got here page three of tab 10 of something
that I can't readily put my hands on, it's the
20 Comeau [ph] decision:

 "The common law rule of estoppel by res judicata
is procedural, not substantive."

MR. DOODY: Nine. Tab nine.

MR. DEARDEN: Tab nine?

25 MR. DOODY: Tab nine.

MR. DEARDEN: It's at tab nine of....

MR. DOODY: Of your factum.

MR. DEARDEN: Tab nine. There we go, thank you, Mr.
Doody. Tab nine of our sole factum, Your Honour -
30 combined book of authorities. Court of Appeal of
New Brunswick. You'll see if you - you see these

5 pages aren't paginated very nicely, but it's a decision of Justice Ryan and it's page - it's just above page four, so you have to go in about seven pages, Your Honour, and you'll see page four in square brackets - or better still you'll see res judicata is the bold heading.

THE COURT: Yes.

10 MR. DEARDEN: And then - so he deals with the authors Sopinka, Letterman [ph] and Ryan, the Law of Evidence, which is the one I just brought your attention to:

15 "...offer two reasons why estoppel by res judicata is based on broad principles of public policy. The first is the state has an interest that there should be an end to litigation. Secondly, no individual should be sued more than once for the same cause. At page 989, the author set out their assessment of the common rule of estoppel by res judicata, which they say is procedural, not substantive."

20 So that's another authority for that proposition.

25 I'm still on the doctrine of abuse of process, Your Honour. If you turn to tab 11 of the compendium, it's the Can-Am Enterprises [ph] case and under the heading of abuse of process, you have again the doctrine of abuse of process:

30 "...engaged inherent power of the Court, which I say Justice Beaudoin has as the case management judge to prevent the misuse of this procedure in a way that would be...unfair to a party through the litigation before it or would in some other way bring the administration of justice into disrepute."

It's a flexible doctrine unencumbered by the specific requirements of concept such as issue estoppel. Paragraph 56:

"One circumstance in which abuse of process has been applied is where the litigation before the Court is found to be in essence an attempt to re-litigate the claim which the forth was already determined."

And then to give you further authority, Your Honour, on this inherent jurisdiction of the judge on case management, I again ask you to go to the whole book of authorities - one of the factum of Professor St. Lewis, tab 15, which is a decision of Justice Ferrier, tab 15. Abraham - Steven Abraham's case, where the applicant was arguing that there was no inherent jurisdiction of a judge the case management and estate matter, you'll see that at paragraph 13. So this was a leave to appeal to Divisional Court application, paragraph 13.

"Each paragraph above shall have to be considered on rule 62.024, but the applicant's overall position is that there's no inherent jurisdiction for a judge to case manage on an estate matter. Sharply put the applicant references all the specific rules and practice directions concerning case managing, finds no reference to specific case management power and argues that inherent jurisdiction cannot be involved when there is in effect no gap under the rules and the subject is specifically dealt with, thus argues the applicants, the decision of D - Justice D. Brown of...law."

Paragraph 15:

"D. Brown - Justice D. Brown dealt extensively with the power of the Court to control its own process as part of its inherent jurisdiction."

5 So that's paragraph 16. If you go to paragraph 17, Your Honour, Justice Ferrier holds:

10 "To that I would add that the Court controls the process throughout, not only at trial, but subject only to the rules of statutory provisions, thus I do not agree that Justice Brown erred in the question of inherent jurisdiction."

15 So there is inherent jurisdiction with Justice Beaudoin. And at paragraph 22 Justice Ferrier holds:

20 "This is case management, the Court has an inherent power to make such orders. I do not agree that there are conflicting decisions. I do not agree that there's reason to doubt the correctness of the order; that rule 62.024 tests have not been met."

25 So to conclude on this point, Your Honour, Justice Beaudoin refused to assign a date for the hearing of the so called open Court motion to allow the public to attend cross-examinations because the issue had already been dealt with. He specifically says that in paragraph three of his endorsement, the issue had already been dealt with. And it clearly had been by Master McLeod. And he clearly had function of the case management judge - is whether he assigns a date for a motion and he has inherent powers a Superior Court judge to make sure that one of the three

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common law doctrines that I referenced you to are not violated. And he was not going to allow the defendant to re-litigate whether the public can attend cross-examinations in this liable action.

THE COURT: Tell – Mr. Dearden, don't tell me....

REGISTRAR OF THE COURT: Five minutes.

MR. DEARDEN: Oh, five minutes. So my next point, Your Honour, you have my submission that you can dismiss this leave application just based on any one of the three doctrines that would apply to Justice Beaudoin refusing to assign a date for an issue that was already decided. But I'll take you to the open Court principle cases – Your Honour may wish to note that our factum deals with the open Court principle issue at paragraphs 26 to 37, that's where in our factum, 26 to 37 deals with this issue. So I'm only going to reference you to two cases. If you turn to tab 13 of the compendium, Your Honour, it's a decision of the British Columbia Court of Appeal, it's the Dean decision, R. v. Dean. I'm going to ask you to turn up paragraph six, please. The first question is whether there is a public right to be present at a cross-examination on an affidavit filed but not in addition to an application to produce further evidence in contradistinction of the public right to be present at a hearing of the application itself, then at paragraph seven the Court holds:

“Cross-examinations on affidavits filed on interlocutory applications, whether in this Court or in Court...in my opinion to not have to be heard in open Court. The public has no right to be present at such proceedings unless some

rule of statute...provides - no one has yet suggested for instance that examinations for discovery or proceedings at which persons other than the parties may be present, and I see no difference in principle between such proceedings and cross-examination of this kind."

And then at paragraph 10:

"The appeal will be heard in open Court, the public will then have a right to be present."

Paragraph 13, the bottom of that decision:

"I should add this, if I am right that this cross-examination ought properly to have been conducted in private, then it might well follow that it would be contempt of Court to publish what occurred even without an express order forbidding publication."

That's the Dean decision of the B.C. Court of Appeal. My friend of course cites you no authority that conflicts with Justice Beaudoin's decision or Master McLeod's decision that - that cross - that the public cannot attend cross-examinations on affidavits. Here is an authority that says they can't - there is no right. So we have an authority on point as opposed to a conflicting decision. And another one, Your Honour, is the Gordon decision and my friend - that Mr. Rancourt briefly alluded to. I have that at tab 12 - or at...tab 12 of the compendium, where the Crown - what happened in this case is the Crown wanted a bunch of other agents, so not just the lawyers, involved in the party representative of the Crown, they wanted other

5 people to be in the cross-examination - to attend
the cross-examination. And if you turn to paragraph
105, Your Honour, 105 and 106 at tab 12, they are
not allowed to do so. So they were relying on the
open Court principle, as you see in paragraph 105,
submitting at least with respect to the presence of
voice monitors at the...of the cross-examinations,
that such government agents are simply exercising
their right of public attendance. In paragraph 106
10 the Crown submits that exclusion of its agents would
offend the public nature of trial proceedings
including pre-trial proceedings. Paragraph 114, so
the next page at the bottom:

15 "The applicants are in effect submitting that
cross-examination under affidavits at an
examiner's office attended by investigating
authorities is unacceptable. In other words,
while recognizing that the Crown is a party has
a prima facie right to be present at the
examination, the applicant's dispute...extended
20 audience to Crown agents and officials."

At 116 the Crown submits that:

25 "Examinations conducted out of Court for
purposes of expediency or administrative
convenience obviously are not to be quoted
secrecy."

And the Court disagrees at paragraph 117, cites the
CBC case of the Supreme Court of Canada and says:

30 "It may be that the open Court...be protected
under section 2B of the Charter does not extend
to every venue in which criminal law is
administered...extended to courts themselves,

5 other considerations may apply to sites not historically considered to public arenas. Imposing an open Court imperative on the examiners environment relating to cross-examinations on affidavits filed in criminal proceedings is unnecessary and unworkable. The record dealt with before the examiner, the affidavit and cross-examination are filed with the Court and used in the pre-trial motion argued in open Court."

10 And that's the case here, Your Honour, if you're dealing with importance, you're not going to make it a necessary and unworkable environment to have members of the public showing up at a cross-examination in private law office where there could be family law proceedings, it could be confidential financial information being dealt with, you just - it just doesn't happen. It doesn't happen. Now - so I'm getting the....

15 THE COURT: A couple more minutes and - as I gave to Mr. Rancourt.

20 MR. DEARDEN: I think what - what's important, Your Honour, is - I want to deal with this Lauer v. Stasiuk [ph] case that Mr. Rancourt referred you to. Because he says that's identical to what's before you. Well, no, it isn't. So at tab 14, you have - I have an extract of the Lauer v. Stasiuk [ph] case. And our submission, Your Honour, is - well, first of all, that case doesn't deal with the common law doctrines of the issue estoppel, collateral attack or abuse of process at all, it doesn't help you at all. And in - so there's - there's no conflicting decision that my friend can point - or that Mr. Rancourt can point you to, to say that refusing to

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allow him to re-litigate it - gave an issue already decided, somehow conflicts with any decision. It sure doesn't with Lauer [ph] which is the only case he's given you as authority as a conflict, it has absolutely nothing to do with those common law doctrines, but also, Your Honour, Judge Beaudoin didn't do what Mr. Rancourt emphasized when he was reading paragraph 27 to you and 26. What - what Mr. - what the party in this case wanted to do was to vary a child custody order and that required trial evidence and the judge didn't allow him to proceed, and put a burden on him. And that is at - if you turn to paragraph 27, and this is what Mr. Rancourt was emphasising to you, the last sentence:

"No rule however permits a judge to place an evidentiary burden upon the applicant in relation to a substantive issue which must be met before a hearing date is set."

Judge Beaudoin didn't do that. He didn't place any evidentiary burden on Mr. Rancourt. He just said "I'm not letting you re-litigate an issue that you didn't appeal before Master McLeod. I'm just not letting you do it." And he didn't. So the Lauer [ph] case, dealing with the material change in circumstances affecting the child custody matter, which required evidence, is nothing to do with what you have to decide today, in my respectful submission, Your Honour. There's no conflict whatsoever.

Now, the last point, Your Honour, is - is the one that troubles me and that's the submission on natural justice where - I will direct you to paragraphs 38 to 46 of our factum. And I'm actually going to - because of time, go directly to that - paragraph. The natural justice points are dealt with at paragraphs 38 through to 46. In paragraph 39 I submit:

"It's troubling that the defendant alleges that Justice Beaudoin summarily dismissed his open Court motion based on Justice Beaudoin's incorrect impression about the motion. A reading of the transcript of the case conference and the reading of all of paragraph three of the endorsement reveals that Justice Beaudoin clearly knew that the defendant's open Court motion was seeking an order that members of the public attend the out of Court cross-examinations."

I deal with paragraph three of Justice Beaudoin's endorsement where he refers to Master McLeod's October 6th decision, which dealt solely with cross-examinations, solely with the public's right to attend cross-examinations on affidavits. And then he adopts the reasons of Master McLeod in that specific endorsement. And he held further:

"There is no right of the public to attend in examination out of Court at the office of the special examiner or Court reporter."

It doesn't say in examination for discovery, he says in examination out of Court. And then if you look at the transcript of what actually happened at that

5 case conference, Your Honour, you'll see in particular mention of - if you go to paragraph 44, page 18 of the factum - and the passage I've highlighted at the top of that page, where Judge Beaudoin says:

"That the open Court principle doesn't apply to examinations for discovery and in examinations on an affidavit."

10 I mean clearly he was dealing with both. He wasn't just under the impression this was about attending at the examination for discovery. He was dealing with both. And he knew what Mr. Rancourt was trying to do; he was trying to get the public into a cross-examination.

15 And the last point on that natural justice argument that Mr. Rancourt was making, this is my last point, is he mentions the Dagenais Mintuk test, Your Honour, and that somehow I had to fulfil that. No, no, Your Honour, the Dagenais Mintuk test, and that was councilman Dagenais, he was one of the many councilmen - Dagenais - that test deals with cases that set - that sets the test overcome the open Court principle - where the open Court principle exists. So when you - when somebody is seeking a non-publication order of what is happening inside this courtroom, then you have to meet the Dagenais Mintuk test to get a non-publication order. Yet he who seeks a non-publication order of what's being said inside the courtroom has to meet that test. The Sierra Club decision of the Supreme Court deals

5 with confidentiality orders, to sealing orders on documents that are filed in a Court file - okay, again a Court file, not out of Court examinations. So if somebody wants to seal part of the Court file, you have to meet what is essentially the Dagenais Mintuk test but they re-jigged it in Sierra Club for when you're trying to keep a confidentiality order over records of the Court. But it's the Court, so that test only applies when the open Court principle applies, the defendant cannot cite one authority to you that the open Court principle applies to out of Court examinations, not one.

15 So Your Honour, in my submission, there is no conflict of any decisions, there's no importance to what happened here, if anything is important, it was that Justice Beaudoin didn't let partisans supporters like Mr. Hickey show up at another cross-examination of Professor St. Lewis and to write the kind of defamatory articles that he writes. Same with president of the university or the chair of the board of governors of the university. That was what was important, was not to have his supporters attend while they are being subjected to cross-examination by him.

25 So subject to any questions Your Honour that you may have, that's - that's my submission, thanks.

30 THE COURT: Thank you. Well, why don't we take - we will take - we're going to have to take a break, we'll come back and....

R E C E S S

U P O N R E S U M I N G

THE COURT: Mr. Doody.

MR. DOODY: Thank you, Your Honour. Your Honour, I will be making reference to my factum, which is unfortunately one of the many green covered books, so I think you have it.

THE COURT: Yes.

MR. DOODY: Your Honour, it's my submission that Mr. Rancourt's motion, as - just as was his motion or his request before Justice Beaudoin, is an abuse of process, it is part of a collateral attack upon Mr - Master McLeod's motion of - or order of October, and Justice Beaudoin was well within his inherent jurisdiction to control an abuse of the Court's process.

Mr. Rancourt seeks to bring this motion and brought this motion for leave to appeal, so he sought to appeal the motion for an open Court and he brings this motion for leave to appeal in an attempt to delay the examinations and cross-examinations which were scheduled for this - this month, and now will be sought to be rescheduled on Monday, April 2nd, at the case conference before Justice Beaudoin. And in my submission, this is part of a pattern of behaviour by Mr. Rancourt which can only be a well thought out process of resistance to this Court's process.

I start with the collateral attack point. Your Honour, at tab one of my factum I've set out the decision of the Supreme Court of Canada in Garland and Consumers Gas, and if I could just take you to paragraph 71 at tab one, this is from the - the decision of Justice Iacobucci and at paragraph 71, which is at page 18, Justice Iacobucci, starting on the second sentence says this:

"The doctrine of collateral attack prevents a party from undermining previous orders issued by a Court or administrative tribunals."

He then cites the Toronto City and Q.P. case which we'll look at next and says:

"Generally, it is invoked where the party is attempting to challenge the validity of a binding order in the wrong forum. In the sense that the validity of the order comes into question in separate proceedings when that party has not used the direct attack procedures that were open to it, in other words appeal or judicial review. In Wilson v. The Queen this Court described the rule against collateral attack as follows: "It has long been a fundamental rule that a Court order made by a Court having jurisdiction to make it stand - and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally, and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation or nullification of the order or judgment."

And then going down to the next paragraph - and the third - fourth sentence:

"The fundamental policy behind the rule against collateral attack is to "maintain the rule of law and to preserve the repute of the administration of justice".

Citing R. v. Litchfield [ph].

"The idea is that if a party could avoid the consequences of an order issued against it, by going to another forum, this would undermine the integrity of the justice system. Consequently the doctrine is intended to prevent a party from circumventing the effect of a decision rendered against it."

And Your Honour it would be my submission that when the history is considered in this case, the conclusion which is...is that that is what Mr. Rancourt is trying to do. And if I could just take you briefly through the relevant history. On October the 6th Master McLeod made his order, and I won't take you to it, my friend Mr. Dearden did that. On January 5th there was - Mr. Rancourt served his motion to stay or dismiss the action on the ground of champerty. On January 26th Mr. Dearden had brought a motion seeking an order that the case be case managed. Mr. Rancourt appeared with me at that case conference on January 26th and while Mr. Rancourt was not opposing the order for a case conference, nor was he consenting to it, but he was opposed to the case conference taking place immediately after Master McLeod ordered that the case would be case managed.

5 The next thing that happened after January 26th,
because the case – there was no timetable
established at the January 26th case conference –
and the next case conference was before Justice
Beaudoin on February the 8th. And before Justice
Beaudoin on February the 8th Mr. Rancourt asked that
the examinations for discovery be delayed until
after the champerty motion was heard. And I deal
with this at paragraph 13 of my factum, and I – set
10 out there the endorsement of Justice Beaudoin –
where he said this:

15 “The defendant also expressed an intention to
bring an open Court motion that would allow any
member of the public or media to attend any
examinations for discovery. For this reason he
expressed the view that this motion, that is the
open Court motion, should be heard before any
cross-examinations or discoveries are scheduled
or take place.”

20 And Mr. Justice Beaudoin did not accede to Mr.
Rancourt’s request that the open Court motion be
heard before any cross-examinations, nor did he
accede to his request that the champerty motion
proceed before the examinations for discovery. But
nevertheless that’s what Mr. Rancourt was seeking.
25 Hold up the action, don’t have any discoveries until
after the champerty motion is dealt with. Mr.
Justice Beaudoin said “No, we’re going to have the
champerty motion and then discoveries proceed in
tandem. You’re not going to hold them up.” Then
30 his next – his next attempt was “Well, I want to
bring this open Court motion and obviously that’s

got to be heard before either the discoveries or the cross-examinations." And Mr. Justice Beaudoin said "No." and he proceeded to set dates for the cross-examination. So Mr. Rancourt was...what did he do? He then wrote to the Court and asked for this motion to be heard, a motion for leave to appeal from Justice Beaudoin's endorsement, which - which dismissed his attempt to have the public appear at the cross-examinations. That - this motion being heard today required that those cross-examinations be rescheduled, they were to take place yesterday and today, among other dates. Consequently there will be a case conference on Monday to reschedule those. We propose new dates for those examinations, and Mr. Rancourt has indicated to us just a day or two ago, that he's going to argue that our dates are inappropriate, but he's not proposed new dates. The result is that this open Court motion so called has delayed the process almost two months, from the February 8th case conference, when the dates were set, to the April 2nd case conference. And it may delay it more. This is, in my respectful submission, an abuse of process of the Court.

Mr. Rancourt also submits that Justice Beaudoin confused his position in respect of the public being entitled to attend at the cross-examination with the public's right to attend at examinations for discovery. Mr. Dearden has taken you through that, I won't take you through it again but I deal with that at page seven of my factum where I set out portions of the transcript of the hearing before

Justice Beaudoin on the 8th of – on the 8th of February and it's very clear that what Mr. Rancourt submits is simply not so. And it was, in my submission, an abuse of process for Mr. Rancourt to come to this Court and submit that Justice Beaudoin did not know that what he was being asked to do was allow a motion to proceed whereby what was being sought was the right of the public to appear and attend at an exami – sorry, a cross-examination.

My friend – Mr. Rancourt stands – I object to his doing so, but I will sit down.

M. RANCOURT: Je voulais m'objecter parce que la première chose qui a été dit à mon sujet – est ce que – ce que – que j'ai exprimé que le juge Beaudoin était de l'opinion que je demandais la présence du public uniquement pour – pour le discovery est faux, j'ai jamais suggéré ça. Ce que j'ai dit c'est que....

LE TRIBUNAL: Vous avez suggéré que c'était une erreur de sa part d'avoir seulement mentionné aux examens et non pas aux contre-interrogatoires.

M. RANCOURT: Alors ce que j'ai dit c'est que – il a mis le tout ensemble, il a pris pour compte que je demandais que les gens soient présent aux deux types d'examination, et discovery et examination d'affidavit, c'est ce que j'ai dit et donc on a mal représenté ce que j'ai dit, et c'est pour ça que je m'objecte.

LE TRIBUNAL: Okay. Merci.

MR. DOODY: Well then, Your Honour, I would ask you to turn up my factum to page number seven where I've

set out the transcript of the hearing on the 8th of February. At the top of page seven, the transcript says this - Juge Beaudoin :

« Le principe de la séance ouverte ne s'applique pas pour les interrogatoires, les interrogatoires sur affidavit ou les interrogatoires au préalable; c'est entre les parties. »

M. Rancourt :

« Oui, je comprends ce que vous dites. Vous expliquez la position actuelle, mais je pense que cette position est contraire au principe de la cour ouverte. »

Juge Beaudoin,

« Non, non. »

M. Rancourt,

« De façon importante. »

Juge Beaudoin,

« Je comprends, mais je dis toutefois que les interrogatoires sur les affidavits doivent se faire et je ne retarde pas cette motion, les interrogatoires pour cette motion-là. Donc il faut fixer une date pour les interrogatoires. »

There's no question that Mr. Justice Beaudoin understood that what was being asked was to allow the public into the exam - cross-examinations for this champerty motion and there's no doubt that Mr.

5 Rancourt sought to have those cross-examinations delayed so that the open Court motion could proceed and there's no doubt that Justice Beaudoin ruled that that would not happen. So in my respectful submission, I repeat, it was an abuse for my - Mr. Rancourt to submit that Justice Beaudoin was confused.

10 And finally, the third way in which this motion is an abuse is that he has litigated this issue before, and I won't take you through Master McLeod's order, my friend has done that, but if I could ask you to turn up the QP decision at tab two, at paragraphs 35 and 37. So tab two of my factum, paragraph 35, it's not black-lined, but my friend took you to it:

15 "Judges have an inherent and residual discretion to prevent an abuse of the Court's process."

20 And then over on the next page at paragraph 37:

25 "In the context that interests us here, the doctrine of abuse of process engages the inherent power of the Court to prevent the misuse of its procedure in a way that would bring the administration of justice into disrepute."

And then citing Justice Goudge's decision in dissent - in Can-Am, which was ultimately adopted by the Supreme Court on appeal, the Court says:

30 "Justice Goudge expanded on that concept in the following terms: the doctrine of abuse of process engages the inherent power of the Court

5 to prevent the misuse of its procedure in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. One circumstance in which abuse of process has been applied is where the litigation before the Court is found to be in essence...

10 And I emphasize in essence,

15 ...an attempt to re-litigate a claim which the Court has already determined. As Justice Goudge's comments indicate, Canadian Courts have applied the doctrine of abuse of process to preclude re-litigation in circumstances where the strict requirements of issue estoppel, typically the privity mutuality requirements are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice."

20 And it does not matter then, Your Honour, whether Justice - Master McLeod's order was not precisely worded so as to apply to the cross-examinations on the champerty motion, because that was the essence of the issue before him. And as the Supreme Court has said, the question is whether - not whether the strict requirements of issue estoppel have been met, but whether the essence of the issue was the same.

30 Your Honour, no good can come from re-litigating the issue which was argued and dealt with by Master McLeod. This argument is advanced to re-litigate the issue only in my submission, to attempt to

5 further delay the cross-examinations on the hearing
of the champerty motion, and this, in my respectful
submission, is abusive. This is part of what Mr.
Rancourt plans to be a long string of procedural
strategies, in my respectful submission, designed to
increase the cost to the university and to delay
Professor St. Lewis' attempt to have a Court hear
and determine the merits of her claim, it should not
be...and in my respectful submission, this
10 application for leave to appeal should be dismissed.

15 The only thing I have to add, Your Honour, is a
respectful request, if possible, a determination on
the merits before Monday morning would be greatly
helpful.

THE COURT: Let me see whether full reasons can be
given before then or not, I don't know.

MR. DOODY: I'm not sure whether reasons....

THE COURT: Are needed? There's some requirement.

20 MR. DOODY: Well, eventually obviously reasons would
be appropriate, but a decision would be helpful.

LE TRIBUNAL: Monsieur Rancourt.

M. RANCOURT: Oui.

LE TRIBUNAL: Réplique?

25 M. RANCOURT: Alors, je suis prêt - je voudrais
simplement juste ouvrir une parenthèse puis
m'opposer à la dernière chose que monsieur Doody a
dit à mon sujet. Il a - il m'a prêté les intentions
de vouloir retarder le processus et de ne pas être
30 sincère dans mon désir dans cette motion actuelle
aujourd'hui, et dans la motion open court, et c'est

absolument faux, et je m'objecte à ce qu'on me prête ces intentions-là.

Maintenant, c'est mon – c'est ma réponse qui commence en ce moment...

LE TRIBUNAL: Oui.

M. RANCOURT: ...si je comprends bien.

LE TRIBUNAL: Oui.

M. RANCOURT: Okay. Je vais juste prendre quelques secondes là. Premièrement, je peux dire qu'on ne peut pas re-litigate quelque chose qui n'a jamais été litigated. Donc cet argument est complètement faux. Je n'ai jamais eu la chance de mettre ma motion open court devant la cour et qu'elle soit entendue sur les mérites, jamais. J'ai déjà expliqué que ce qui était devant le protonotaire McLeod était une question collatérale, absolument collatérale, on ne m'avait pas averti d'avance qu'on allait faire monter ces sujets. Ça m'a pris par surprise. C'était attaché à une des conditions pour une ré-examination précise. Il y a....

LE TRIBUNAL: Là votre option – votre option – votre remède ç'aurait été de faire appel sur la décision du protonotaire McLeod, s'il a fait une décision sans de vous donner un opportunité de faire valoir votre position ou votre – vous n'avez rien fait, vous avez accepté sa décision, donc – c'est ça – c'est ça le point – si vous avez objection à ce que monsieur – le protonotaire McLeod a fait – pas d'objection.

M. RANCOURT: Monsieur le Juge, je signalais....

LE TRIBUNAL: Vous objectez maintenant. Maintenant vous objectez.

M. RANCOURT: Bon. Monsieur le Juge, merci pour cette clarification. Je signalais le fait que ça n'avait pas été mené d'avance.

LE TRIBUNAL: Pour signifier – c'était une demande additionnelle faite par...

M. RANCOURT: Oui.

LE TRIBUNAL: ...maître Dearden devant....

M. RANCOURT: Et la seule raison....

LE TRIBUNAL: Écoutez, je veux une décision sur ces questions ici, parce qu'on a des problèmes, et cetera, et cetera. Donc vous avez fait des représentations. Maître Dearden aussi a fait des représentations. Le protonotaire McLeod a rendu une décision. Bon.

M. RANCOURT: Okay. La seule raison que j'ai soulevé ce point c'est par rapport à la loi, la jurisprudence par rapport à res judicata qui dit clairement que quand la première décision était quelque chose de collatérale, on ne peut pas ensuite appliquer res judicata, c'est la seule raison que j'ai voulu surmonter ce point.

LE TRIBUNAL: Est-ce que c'est collatérale ou si c'est la même – la même question que vous voulez soulever dans cet appel?

M. RANCOURT: Okay. Donc....

LE TRIBUNAL: C'était ma question. Est-ce que le public a le droit d'être présent dans un examen – une audience pour un examen sur les affidavits? Est-ce que le protonotaire McLeod...

M. RANCOURT: Non, voici ce que....

5 LE TRIBUNAL: ...dit non - réponse non à cette question? Je crois que oui, dans ses motifs. C'est pas dans l'ordonnance, mais - c'est pas dans son ordonnance que non les membres du public ne peuvent pas être présents.

M. RANCOURT: Monsieur le Juge, s'il vous plaît...

LE TRIBUNAL: Oui.

M. RANCOURT: ...permettez-moi de faire ma réponse.

LE TRIBUNAL: Oui.

10 M. RANCOURT: Je vais donc ramener les questions de lois précise qui s'appliquent à res judicata, parce que contrairement à ce que mes opposants....

15 LE TRIBUNAL: Je suis très au courant - très au courant du principe de res judicata, puis abus de procès, je suis très au courant de ces...

M. RANCOURT: Oui. Je vais simplement signaler...

LE TRIBUNAL: ...principes.

M. RANCOURT: ...la chose suivante.

20 "Our Court has held that sub issues which underlie the main issue determined in another matter...

C'est dans ce sens-là que c'est collatéral.

25 "...are not barred by issue estoppel in a new action in which they are issues."

C'est collatéral à la motion première devant le juge, c'est dans ce sens-là que c'était collatéral, par rapport au processus res judicata.

30 Deuxièmement, et ça c'est très important,

"The issue of res judicata is tied in with that of issue estoppel as the same question test is the focal point for issue estoppel. The same question test."

Alors voici ce que la jurisprudence dit à propos du same question test, et je suis en train de lire de Hiltop v. Catana que j'ai déjà cité avant et qui est dans mon moving party's reply compendium.

LE TRIBUNAL: Je suis d'accord que si c'est pas la même question, ce n'est pas la même question, bon bien res judicata ou abus de procès a aucune application.

M. RANCOURT: Je - merci, Monsieur le Juge.

LE TRIBUNAL: Je suis d'accord avec ça.

M. RANCOURT: Merci, Monsieur le Juge.

LE TRIBUNAL: Mais c'est pas la bonne question.

M. RANCOURT: Mais s'il vous plaît laissez-moi...

LE TRIBUNAL: Selon....

M. RANCOURT: ...faire ma présentation.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: Je veux ensuite insister sur la chose suivante.

"As our Court of Appeal said....

MR. DEARDEN: Sorry, where - where are you reading from, Mr. Rancourt?

MR. RANCOURT: As I said to the Court - c'est Hiltop v. Catana.

MR. DEARDEN: At what page?

M. RANCOURT: Et c'est le - là maintenant je lis à la page cinq, le paragraphe 199. Et ça, Monsieur le

Juge, c'est dans mon petit compendium d'aujourd'hui, le - l'onglet numéro un.

LE TRIBUNAL: Oui.

M. RANCOURT: Et donc l'onglet numéro un, je suis à la page cinq, et je suis au paragraphe 199, et là c'est très, très important parce que voici la chose,

« As our Court of Appeal said, the Courts have taken a fastidious [ph] approach to the same question on the met test. They state although at a high level of generalization true proceedings might seem to address the same question, this requirement of issue estoppel is met only if on careful analysis of the relevant facts and the applicable law, the answer to the specific question in the earlier proceeding can be said to be determined - to determine the issue in the subsequent proceeding - in the subsequent proceeding.”

Okay. Donc ils - ils insistent dans la jurisprudence qu'il faut prendre de façon très rigoureuse cette question de est-ce que c'est la même question. Et je soumets, Monsieur le Juge, que ce n'était pas du tout la même décision (sic) parce que - et il est clair ici, il est clair, je prends l'onglet quatre, Monsieur le Juge, dans mon compendium. À la page 94 de l'onglet quatre, en haut de page. Je dis :

“So that would be like a general statement that would...”

Et la cour dit:

“I'm...”

Et moi je dis:

...establish that."

Puis la cour dit:

"I'm not taking any general statements; I am dealing with the cross-examination if I order it to take place and who can be there."

Et je dis:

"I see."

C'est très clair, je pose directement la question à Master McLeod, est-ce que ça va s'appliquer de façon générale? Il dit « Non, ça s'applique à l'ordre d'aujourd'hui qu'on me demande de faire. » Et c'est pour ça que je n'ai pas fait appel, Monsieur le Juge, parce que je n'avais pas besoin de faire appel avant qu'il y ait d'autres examinations, et c'est pour ça que j'ai mis ma motion avant qu'il y ait ces autres examinations.

Aussi, vous pouvez voir, si vous prenez mon factum et si vous prenez - à mon factum il y a - si on va à la page huit de mon factum, je cite ici à partir de transcript, le Juge Beaudoin.

LE TRIBUNAL: C'est quel - quel onglet où c'est....

M. RANCOURT: C'est le factum lui-même, donc c'est tout à l'avant et on va à la page huit. Si vous

êtes à la page huit, en haut de page, je ne sais pas si vous êtes là, Monsieur le Juge?

LE TRIBUNAL: Oui, page huit.

M. RANCOURT: Alors en haut de page, Monsieur le Juge, l'ordre du Master était pour une session de ré-examen précise, l'ordre était pour cette session-là, et le Juge Beaudoin dit :

« Je répète l'ordonnance dans ce cas-là. »

Ceci montre que le Juge Beaudoin était parfaitement au courant que l'ordre pouvait être précise pour une date et il a dit :

« Malgré ça je n'entendrai pas votre motion. Malgré ça je vais simplement reprendre les mêmes - les mêmes raisons qui ont été avancées de façon collatérales, c'est-à-dire attachées à une action qui ne portait pas sur cette question-là. »

Il a décidé lui-même que même si la question n'était pas la même, il allait dans ce cas-là décider qu'il allait simplement reprendre la décision de Master McLeod sans jamais entendre ma motion de open court, sans jamais la permettre d'être argumentée à plein alors que je l'avais soumis précisément devant les prochaines examens pour assurer ce principe de cour ouverte à ces examens-là.

Mes opposants ont parlé d'un délai de cinq mois. Ils ont omis de dire que pendant ces cinq mois-là il y a eu de grandes négociations pour faire du - pour faire du mandatory mediation et qu'immédiatement

5 après le mandatory mediation ils ont soumis une
motion pour case management pour nous obliger à
aller en case management. On a été très occupé dans
cette période de cinq mois. Et moi je savais que je
devais mettre ma motion pour cour ouverte avant les
prochaines examinations, parce que je savais que
l'ordre de Master McLeod était pour une ré-
examination précise. Et c'est exactement ce que
j'ai fait, et cette motion a été refusée par le Juge
10 Beaudoin. Il a refusé de cédule les dates, il a
refusé de l'entendre, il l'avait pas en main propre,
il - il s'est mal dirigé sur le contenu de cette
motion. À maintes fois on a entendu aujourd'hui
répéter que le Juge Beaudoin parlait des
15 examinations called discovery, des examinations au
préalable - il n'est pas question de ça dans ma
motion cour ouverte, mais pas du tout. Et donc
c'est un signe clair qu'il n'avait pas compris -
qu'il n'était pas au courant de ma motion en
20 question qu'il refusait d'entendre.

Et je peux d'ailleurs reprendre un autre exemple où
le Juge Beaudoin a mal compris que je demandais que
soit inclus les - les interrogatoires au préalable.
25 Par exemple, dans le transcript précis de la session
avec le Juge Beaudoin, si on va à la page 58, la
ligne 21, on voit encore un autre exemple - il y en
a plusieurs exemples comme ça où le Juge Beaudoin
dit - alors là je parle du - je parle du transcript
30 de la session avec le Juge Beaudoin.

LE TRIBUNAL: Ça c'est....

M. RANCOURT: Ça devrait être en rouge – une couverture rouge, le transcript avec le Juge Beaudoin, normalement ça serait un petit livre en rouge. Voilà.

MR. DEARDEN: Your Honour, while you're looking for that, I just want to put on record this isn't reply. He's just rearguing.

LE TRIBUNAL: Des limites....

M. RANCOURT: Mais je – je – je précise, ça c'est quelque chose qu'ils ont – ils ont soulevé la question – ils ont prétendu que j'avais que le Juge – que j'avais que le Juge Beaudoin croyait que je parlais que des discoveries, c'est pas vrai. Le Juge Beaudoin croyait....

LE TRIBUNAL: Non, eux autres disaient que c'était les deux, ou au moins....

M. RANCOURT: Le juge les acceptait les deux.

LE TRIBUNAL: Juge Beaudoin disait c'est les deux.

M. RANCOURT: Exact.

LE TRIBUNAL: Protonotaire McLeod c'était les....

M. RANCOURT: Aussi les deux.

LE TRIBUNAL: Contre-interrogatoires surtout. C'était....

M. RANCOURT: Mais pendant le transcript il a parlé des deux lui aussi.

LE TRIBUNAL: Les deux aussi.

M. RANCOURT: Alors lui aussi il ne comprenait pas – c'était dans le feu de l'action, il ne comprenait pas ce que j'avais.

LE TRIBUNAL: Mais là votre point c'était que l'erreur du Juge Beaudoin c'était qu'il parlait seulement des examens au préalable et puis...

M. RANCOURT: Non, non.

LE TRIBUNAL: ...votre demande c'était pas pour les examens au préalable, c'était pour les contre-interrogatoires sur les affidavits, ça c'est votre point que c'était l'erreur...

M. RANCOURT: Non, non.

LE TRIBUNAL: ...eux autres ils disent « Non, non, le Juge Beaudoin était au courant que c'était pour les contre-interrogatoires sur les affidavits en plus que d'être pour les examens au préalable. »

M. RANCOURT: Monsieur le Juge, ce n'est pas mon point. Je n'ai jamais fait ce point-là. Je n'ai pas fait ce point-là devant la cour ici aujourd'hui. C'est eux qui disent que je fais ce point-là. Moi je n'ai jamais fait ce point-là. Je n'ai jamais dit le juge - je n'ai jamais dit le Juge Beaudoin croyait que je demandais pour les - pour les examens au préalable. Je n'ai jamais dit ça.

LE TRIBUNAL: Il a utilisé ces mots, vous avez...

M. RANCOURT: Oui. Mais...

LE TRIBUNAL: ...démontrez qu'il utilisait...

M. RANCOURT: ...il ne demandait....

LE TRIBUNAL: ...des examens au préalable, donc j'ai - j'ai pris pour ça que votre point c'était que - il - en erreur, parce qu'il parlait des examens au préalable puis selon vous c'était des contre-interrogatoires sur des affidavits. Ça j'ai compris votre point. Il dit « Non, non, il parle de quelque chose...

M. RANCOURT: Laisse....

LE TRIBUNAL: ...puis moi je demande quelque chose d'autre. »

M. RANCOURT: Permettez-moi de clarifier.

LE TRIBUNAL: Oui.

M. RANCOURT: Ma motion pour open Court est pour les examens sur affidavits uniquement.

LE TRIBUNAL: Contre-interrogatoires.

M. RANCOURT: Les contre-interrogatoires...

LE TRIBUNAL: Examen, point.

M. RANCOURT: ...affidavits – uniquement, point.

LE TRIBUNAL: Point.

M. RANCOURT: Ça c'est ma motion.

LE TRIBUNAL: Ça c'est votre motion.

M. RANCOURT: Mon – mon seul point c'est que le Juge Beaudoin était sous l'impression que je demandais et pour ça et pour discovery, c'est ça mon seul point.

LE TRIBUNAL: Okay.

M. RANCOURT: Donc il s'est trompé en demandant – en pensant que je demandais pour les deux.

LE TRIBUNAL: Okay.

M. RANCOURT: Et mes amis ont représenté que j'avais représenté la position du Juge Beaudoin comme étant que je demandais que pour discovery, c'est faux.

C'est ça la précision que je voulais amener. C'est la seule importante de ce point-là.

Maintenant – donc – et un autre point que mes opposants ont fait que je crois n'est pas correct c'est d'avancer cette idée que – une défense contre une motion qu'on peut appeler de res judicata est un point purement procédural. Rien....

LE TRIBUNAL: Non. Non, non, c'est la décision – les décisions du Juge Beaudoin – ils disent sur la question de res judicata, ça c'est des – la question

procédurale qui est dans la juridiction du Juge
Beaudoin.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est le point.

M. RANCOURT: Oui.

LE TRIBUNAL: Ils ont des citations et causes....

M. RANCOURT: Tout à fait. Et donc je veux répondre
à ce point-là, je pense que rien ne peut être plus
loin de la réalité telle qu'on la voit dans la
jurisprudence parce qu'il y a une énorme
jurisprudence sur res judicata, et elle est très
claire cette jurisprudence-là, par exemple elle
dit :

"The Court may look to documentation behind the
formal judgment to determine what was decided
for the purpose of res judicata."

Ça implique donc - et ça dit:

"The burden is on the party proving res
judicata."

Ce n'est pas le langage de quelque chose purement
procédural, ça dit qu'on peut aller creuser, on peut
aller voir les autres documents, qu'il y a un
fardeau de la preuve, ce n'est pas une question
procédurale. Res judicata...

LE TRIBUNAL: Mais ça c'est...

M. RANCOURT: ...c'est une façon...

LE TRIBUNAL: ...certain que....

M. RANCOURT: ...d'écraser une déci - d'écraser une
motion que quelqu'un veut amener.

5 LE TRIBUNAL: Mais est-ce que vous avez une - est-ce
que vous avez aucune cause qui vous supporte, parce
que Sopinka puis Letterman (ph) ça c'est comme la
bible pour les questions de la preuve. Donc ils ont
une citation - disons que res judicata c'est une -
c'est une règle de la preuve, et non pas une
question substantive, donc ils acceptent votre point
qu'un juge qui agi comme - pour gérer des causes -
elle n'a pas d'autorité de faire des décisions
10 substantives sur une cause sans peut-être une
motion, mais d'habitude c'est procédural. Donc
selon Sopinka, res judicata c'est - c'est pas une
question substantive.

15 M. RANCOURT: Mais....

LE TRIBUNAL: Puis ça c'est une cause - Cour d'Appel
je crois du Nouveau Brunswick puis en plus Letterman
- Sopinka et Letterman.

M. RANCOURT: Mais Monsieur le Juge, étant donné....

LE TRIBUNAL: Ça c'est le....

20 M. RANCOURT: Oui. Oui.

LE TRIBUNAL: L'autorité. Donc je vous demande -
vous avez des autorités...

M. RANCOURT: Oui.

LE TRIBUNAL: ...au contraire?

25 M. RANCOURT: Oui. Voici ma réponse. Pour que le
Juge Beaudoin décide de l'argument res judicata, il
aurait fallu qu'il utilise ce terme-là, il l'a
jamais mentionné, et il aurait fallu qu'il accepte
les arguments d'un côté et de l'autre à savoir si
30 c'est res judicata. On a jamais eu l'occasion de
faire ça. Ça c'est quelque chose qu'on ferait
normalement de - dans la motion elle-même.

Le point important ici, Monsieur le Juge, c'est que je n'ai jamais eu l'occasion de mettre de l'avant une motion – elle n'a pas été acceptée devant la cour, elle n'a jamais été entendue et elle était sur une question différente que l'ordre du Master McLeod. On l'a lu en anglais, on l'a lu en français, l'ordre de Master McLeod était pour des examinations précise, à une date précise, le 14 octobre 2011, je lui ai posé la question est-ce que ça s'applique de façon générale? Il m'a dit « Non, c'est pour l'ordre que je suis à veille de faire. » Dans son ordre le langage est clair, il parle de « the examination » ça ne peut que se référer aux examinations qu'il vient d'ordonner pour le 14 octobre, l'ordre de Master McLeod était très précis, c'est pour ça que je n'ai pas fait appel. J'ai ensuite fait une motion pour avoir accès public aux prochaines examinations et cette motion n'a jamais été entendue. Et un juge dans une gestion de cause n'a pas la compétence de bloquer les motions; les règles sont claires sur cette question-là. Et – les règles sont claires et la jurisprudence que j'ai cité aussi, le cas de Lauer où ça été fait une seule fois, la Cour d'Appel en Colombie Britannique a renversé cette décision du juge, même si le juge était de l'opinion que la motion originale était faible et n'avait pas grand de chance, la Cour d'Appel a dit « Y'en est pas question, vous n'avez pas l'autorité de faire ça. »

LE TRIBUNAL: Eux autres ils disent – les défendeurs – ou les demandeurs prétendent qu'il peut bloquer,

si vous - utilisez votre terme, une motion à une gestion de cause, audience de gestion de cause, basé sur le principe de res judicata. C'est ça - eux autres disent « Oui, oui, il a cette autorité dans une audience de gestion de cause, empêcher - vous empêcher de porter cette motion de open court, basé sur les principes de res judicata - ils disent abus de procès c'est les deux principes que - ça c'est les points de...

M. RANCOURT: Oui.

LE TRIBUNAL: ...des demandeurs. Et selon vous...

M. RANCOURT: Je comprends.

LE TRIBUNAL: ...selon vous il n'a pas cette autorité - vous vous dites qu'il n'a pas cette autorité?

M. RANCOURT: Il n'a pas l'autorité de bloquer ma motion, alors voici - laissez-moi expliquer.

LE TRIBUNAL: Mais eux autres ils disent qu'il peut faire ça, exactement...

M. RANCOURT: Oui.

LE TRIBUNAL: ...au contraire.

M. RANCOURT: Mais laissez-moi expliquer, on est aujourd'hui en train d'argumenter une autre motion.

LE TRIBUNAL: C'est simplement est-ce que le Juge Beaudoin avait l'autorité à une audience de gestion de cause de mettons bloquer votre motion, de ne pas accepter - je ne sais pas exactement le terme, de refuser, rejeter votre demande de cédule une audience pour une autre motion. Ils disent que c'est dans le domaine de gestion de cause - et puis il applique le principe de res judicata, il dit « Écoutez, le protonotaire McLeod a déjà décidé cette même question, donc - c'est ça, est-ce que le

Juge Beaudoin - ici c'est le Juge Beaudoin, est-ce que le Juge Beaudoin avait l'autorité de faire - ça - c'est ça vous portez appel, vous voulez avoir permission de porter appel sur sa décision. Eux autres disent qu'il avait pleinement l'autorité de le faire.

M. RANCOURT: Ma réponse est la suivante, Monsieur le Juge.

LE TRIBUNAL: Vous avez des causes - oui.

M. RANCOURT: Permettez-moi de répondre à cette question.

LE TRIBUNAL: Oui. Okay. Expliques - ma compréhension.

M. RANCOURT: Oui, oui. Permettez-moi de répondre.

Ma réponse est la suivante. C'est une question ouverte si dans une confé - une conférence sur la cause le juge aurait eu l'autorité de faire ça. Mais un point beaucoup plus important est le suivante. Il n'a pas fait ça. On a pas argumenté la question res judicata à la conférence. On a pas argumenté ce point-là, on a pas eu la chance de présenter des....

LE TRIBUNAL: Votre point c'est que vous avez pas eu la chance de présenter votre position sur la question de res judicata.

M. RANCOURT: Absolument, ça n'a jamais été....

LE TRIBUNAL: Ça pas été....

M. RANCOURT: Ça n'a jamais été mentionné. Ça n'a jamais été mentionné. Je n'ai pas pu préparer un factum. Je n'ai pas pu faire des recherches. Je n'ai pas pu....

LE TRIBUNAL: Dans la transcription du Juge Beaudoin il n'y a pas eu des discussions de est-ce ça s'applique, est-ce que...

M. RANCOURT: Absolument pas.

LE TRIBUNAL: ...vous avez demandé une motion, il dit non - non, non, il dit ça, non, plusieurs fois.

M. RANCOURT: Exactement. Exactement. Je demandais une motion pour la motion cour ouverte où dans le contexte de cette motion-là l'argument res judicata aurait été correctement argumenté. Mais on m'a nié cette motion-là. Et en plus, pendant la conférence avec le Juge Beaudoin, on a pas argumenté la question res judicata, et - mes - mes opposants - mes opposants ont cité une seule phrase.

MR. DEARDEN: Mr. Rancourt.

LE TRIBUNAL: Un instant. Un instant.

M. RANCOURT: Une seule phrase.

LE TRIBUNAL: Un instant.

M. RANCOURT: Oui.

MR. DEARDEN: Sit down, please. Your Honour, if you look at paragraph nine of my factum, I've set out an exchange between myself and Judge Beaudoin and Mr. Rancourt where I brought Master McLeod's decision to Judge Beaudoin's attention and told him that this issue was dealt with in paragraphs 19 through 21 of Master McLeod's decision and there was an exchange back and forth with Mr. Rancourt and Judge Beaudoin that - look, it's decided, you didn't appeal it, the time has gone - the time for appeal is gone and....

THE COURT: Where are you reading from?

MR. DEARDEN: I'm reading paragraph nine of my factum.

M. RANCOURT: Monsieur le Juge, ce n'est pas une objection, il est en train de présenter des arguments.

LE TRIBUNAL: Non, mais c'est - vous dites que ça n'a pas été...

MR. DEARDEN: He's misleading the Court.

LE TRIBUNAL: ...discuté. Vous avez dit que ça n'a pas été discuté devant le Juge Beaudoin.

M. RANCOURT: La question res judicata.

LE TRIBUNAL: La question de res judicata - que la décision a déjà été tranchée ou décidée par protonotaire McLeod, selon vous ça n'a pas été discuté avec le Juge Beaudoin, donc vous avez pas eu votre chance de faire vos arguments que non, c'est pas res judicata, il n'a pas décidé ces questions-là. Monsieur Dearden dit ce n'est pas le cas. Ils disent que non, non, non, il y a les transcriptions.

MR. DEARDEN: In paragraph nine of our factum I say to Justice - in the middle of page four,

"Mr. Justice Beaudoin, I'm not sure how we switched off to the open Court motion, but if I could just advise the Court that Master McLeod has already ruled on this issue on October the 6th and Ms. Semenova [ph] has a copy of his ruling. In paragraphs 19 through 21 Mr. Rancourt objected to me asking Master McLeod to make a specific direction that people like Mr. Hickey, who choose to write about what happened in cross-examination, are not to be allowed there and he specifically ruled, he rejected the open Court principle argument and ruled that only the parties and their - or their parties could attend, and Mr. Rancourt did not appeal that decision."

And then I say in the next page,

"I think this is an important decision for you to be aware of Justice Beaudoin."

And Judge Beaudoin says:

"Mais la question est faite - et le temps d'appel est écoulé. »

The time for appeal is gone. So clearly we dealt with - this has already been decided, yes, the words res judicata aren't there, but that's what the issue has been dealt with before me and - which is what Justice Beaudoin wrote in his endorsement.

The other thing, Your Honour, is - is Mr. Doody and I never did deal with the case that we were just ambushed with, this Hiltops case, we never addressed this in our argument, so it's not a proper reply, but the Court will note that our argument is not just based on res judicata, it's also collateral attack...

THE COURT: Abuse of process, collateral attack.

MR. DEARDEN: ...and abuse of process. And to me it's an abuse of process that there would be a suggestion that - well, any of these suggestions that Mr. Rancourt is making about what Judge Beaudoin did or didn't do, I mean it's preposterous to suggest that he hadn't made a res judicata decision because he didn't use those specific attempt - or Latin words. I have already dealt with this - is res judicata.

M. RANCOURT: En réponse à ça.

LE TRIBUNAL: Oui.

M. RANCOURT: Ce que j'essaye de communiquer à la cour c'est que cette conférence sur la cause qui n'était pas....

LE TRIBUNAL: Je comprends vous dites - c'est pas votre - c'était pas votre motion - c'était pas votre motion.

M. RANCOURT: Ce n'était pas ma motion et ce n'était pas une structure et une procédure adéquate pour débattre cette question à propos d'une motion pour rejeter et pour contrer une motion. Ce n'était pas le contexte correct en suivant les règles et les procédures pour correctement entendre et débattre ma motion et les mérites de ma motion. C'est - en fait, la motion d'aujourd'hui entière est à propos de ce fait qu'on m'a nié ma justice naturelle en jamais me permettant que ma motion soit entendue et débattue avec les protections des règles qui sont en place, y'a rien dans une - une conférence par rapport à la cause n'est pas un hearing sur une motion. Ce n'est pas le but et ce n'est pas inclus dans les pouvoirs d'une telle conférence de pouvoir faire une telle chose, excepté pour des choses minimes et procédurales quand il n'y a pas d'objection. Donc c'est ça mon point, c'est qu'on ne m'a jamais permis que ma motion soit entendue. Et aujourd'hui on essaie de me nier ma motion en disant ç'avait déjà été décidé, et si on regarde les instances de quand ça été décidé, ça n'a pas été décidé. La question et la réponse sont différentes, c'était pour des dates précise. Et ça c'est clair, c'est dans les données, il n'y a aucune question que

5 c'était pour les examinations du 14 octobre, point à
la ligne, il n'y avait pas d'autre ordre au-delà de
ça, et quand j'ai demandé au rendeur de décision,
est-ce que c'est général? Il m'a essentiellement
dit « Non, c'est pour l'ordre que je vais faire
maintenant. » Donc ce n'était pas la même question.
Et donc j'ai un droit d'amener une motion sur la
question générale pour toutes les examinations sur
10 affidavits dans cette cause et je n'ai jamais eu ce
droit, je n'ai jamais eu l'occasion d'amener cette
motion et de correctement, avec protection, de
l'argumenter. Et aujourd'hui ici n'est pas la place
pour argumenter les mérites de cette motion, ni de
la trouver invalide, parce que ceci est une motion
15 sur autorisation pour obtenir appel. Ce n'est pas
la place non plus pour décider de cette motion,
c'est ça mon point, c'est qu'il y a un abus de mes
droits fondamentaux. Voilà c'est le tout de ma
réponse.

20 LE TRIBUNAL: Merci.

M. RANCOURT: Sauf si vous avez des questions.

LE TRIBUNAL: Bien vous avez eu - vous avez eu mes
questions pendant....

M. RANCOURT: Oui, c'est vrai. Merci.

25 THE COURT: I'll take this under - I'll reserve on it
and I'll - I will try to get you a decision by -
what time is your matter? I'm not sitting in Ottawa
the next two days, that's part of the problem for
me, but...

30 MR. DEARDEN: 9:00 a.m.

THE COURT: 9:00 a.m. on Monday.

M. RANCOURT: Est-ce qu'il serait possible
d'avoir....

LE TRIBUNAL: J'aurai pas mes motifs.

M. RANCOURT: Non.

LE TRIBUNAL: C'est sûr que j'aurai pas mes motifs.
Je suis dans une autre matière. I'm on another
matter on Thursday, Friday, but....

M. RANCOURT: Monsieur le Juge, est-ce que je peux
faire une demande - on va être dans la difficulté
que le Juge Beaudoin va vouloir assigner des dates
pour ces examinations, est-ce que - comment est-ce
qu'on va résoudre ce problème de retenir ces
examinations avant d'avoir votre décision?

LE TRIBUNAL: Je vais faire mon possible, mais -
c'est pas une promesse, mettons je pourrais dire ça
de même. So I'll do my best, but it's - it's now -
okay. So you'll bring up the....

MR. DEARDEN: Our position, by the way...

THE COURT: Yes.

MR. DEARDEN: ...Your Honour, I mean we're inviting
you, if you can just make a call like dismissed or
allowed, and reasons later, fine, but if you can't -
you know, you already hear what's coming on Monday,
he doesn't have a stay and....

THE COURT: He doesn't have a which?

MR. DEARDEN: He doesn't have an order staying any of
the cross-examinations...

THE COURT: No, no, no.

MR. DEARDEN: ...that are supposed to happen, so....

THE COURT: No, no.

MR. DEARDEN: Our position on Monday before Judge Beaudoin is set the dates for cross-examination, which we want to happen on - next week.

5 M. RANCOURT: Monsieur le Juge, si je peux répondre à ça. J'ai mis une motion pour stay pending appeal - elle est devant la cour, mais le juge en chef Hackland a décidé que cette motion - ça serait mieux si elle était entendue avant, moi j'avais - je pensais que le motion for stay pending appeal serait
10 entendu en premier, mais c'est pas le cas. Donc toute cette question reste à déterminer.

MR. DEARDEN: I'm sorry, that was important and I didn't get any - because the machine stopped working, I don't know what he said and it's going to
15 - I know he's going to talk about it Monday morning. So maybe he could say it - I apologize, maybe he can say it in English or say it again and have it translated.

INTERPRETER: Yes, the machine is - I'm sorry.

20 MR. DEARDEN: So say it again so....

M. RANCOURT: Okay, alors j'ai dit que - I can say it in English if you like.

MR. DEARDEN: Thank you, that would be very helpful. I apologize for....

25 MR. RANCOURT: I simply - I simply pointed out that there is a motion for stay pending appeal from the - before the Court and that I thought it would be heard before the instant motion, but that the chief justice decided that it was better to hear this
30 motion first. I simply pointed this out in response to Mr. Doody's comments.

MR. DEARDEN: Well, when was that motion before the Court? I have not....

MR. RANCOURT: I mean it's filed.

MR. DEARDEN: I don't know anything about it. I didn't know it was filed. All I know is it was an attempt to service - serve with a motion without a return date, and I did not know that it had been filed. I did not know that Justice Hackland had made any decision. I do not know that he has made a decision.

MR. RANCOURT: No, it had a return date and you were served.

MR. DEARDEN: As far as I'm concerned - my respectful submission is and will be on Monday, my friend has not sought or obtained, more importantly not obtained a stay.

THE COURT: And I'm not aware of any other....

MR. DEARDEN: And in those circumstances I will be asking Justice Beaudoin to set dates for Wednesday and Thursday.

M. RANCOURT: Je suis complètement surpris par ces propos-là. Je - c'est devant la cour, c'est - j'ai les preuves, mais je les ai pas amenées avec moi.

THE COURT: Okay. But as I've said, what - what - what can be left to Monday, I will leave to Monday.

MR. RANCOURT: Yes.

MR. DEARDEN: Thank you, Your Honour.

M. RANCOURT: Merci.

M A T T E R A D J O U R N E D

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Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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I, Linda A. Lebeau, certify that this document is a true and accurate transcript of the recording of St. Lewis v. Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario taken from Recording No. 0411-20-20120328 which has been certified in Form 1.

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JUL 12 2012

Date

Linda A. Lebeau

Linda A. Lebeau

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COUR SUPÉRIEURE DE JUSTICE

ENTRE :

JOANNE ST. LEWIS,

Plaintiff

- et -

DENIS RANCOURT,

Défendeur

CONFÉRENCE RELATIVE À LA CAUSE

ENTENDUE DEVANT L'HONORABLE JUGE R. BEAUDOIN,
le lundi 2 avril 2012 à OTTAWA (Ontario)

COMPARUTIONS:

Richard G. Dearden

Counsel for the Plaintiff

Peter Doody

Counsel for the University of Ottawa

Denis Rancourt

En personne

COUR SUPÉRIEURE DE JUSTICE

TABLE DES MATIÈRES

TRANSCRIPTION DEMANDÉE LE: 10 mai 2012

TRANSCRIPTION COMPLÉTÉE LE: 21 mai 2012

AVIS DONNÉ LE: 22 MAI 2012

LE LUNDI 2 AVRIL 2012

LE TRIBUNAL: Bonjour, tout le monde. Je vais tout simplement vérifier au préalable que j'ai tous les documents que les parties ont déposés. D'abord, j'ai quelques cahiers. Je vais les prendre en ordre.

J'ai tout d'abord un cahier de la part de Me Dearden en date du 21 mars, a quatre onglets, qui propose - avec une lettre du 21 mars.

Par la suite, c'est M. Rancourt qui a déposé un cahier de motion qui traite d'une transcription bilingue.

Par la suite, j'ai un autre cahier de la part de M. Dearden à cinq onglets. Je pense que ça répète un peu ce qu'il y avait auparavant.

Ensuite un quatrième cahier de la part de M. Rancourt, en anglais, qui dit tout comme l'autre qui est en anglais, "Please provide a copy of this letter. Issues to be addressed at case conference."

Et finalement j'ai une correspondance de la part de M. Doody, j'ai deux lettres qui font la suite de la motion qui a été entendue par le juge Smith la semaine passée.

Je pense que M. Doody auparavant avait communiqué à la cour à propos de l'échéancier et à ce moment - je pense que cette correspondance-là est inclus dans un des cahiers. Donc, c'est tout ce que j'ai. Est-ce qu'il y a d'autre chose que je devrais avoir en main?

MR. DEARDEN: Good morning, Your Honour. Just a clarification. Did you say you had something from me that had five tabs as opposed to six, which was my March 28th letter to Ms. Lowe?

THE COURT: Six, you're right. Six onglets, vous avez raison.

Alors, d'après ce que je peux voir, selon les communications que j'ai reçues, il est évident que j'avais établi un échéancier lors de la conférence qui a eu lieu le 8 février, et vu la motion qui avait été apportée par M. Rancourt pour venir en appel de ma décision qui excluait les membres du public d'assister aux interrogatoires, cet appel a été entendu. Cette motion pour la permission de procéder en appel a été entendue la semaine passée et, si je comprends bien, a été rejetée par le juge Smith.

Mais le juge Hackland avait effectivement suspendu l'échéancier, c'est-à-dire, à mon avis, la question des interrogatoires, mais les autres parties de l'échéancier, à mon avis, restaient toutefois en vigueur, n'est-ce pas? Est-ce qu'on s'entend sur ça?

M. RANCOURT: Moi au début c'était pas clair, mais j'accepte maintenant que c'est une interprétation tout à fait raisonnable.

LE TRIBUNAL: Oui, c'est allé à - parce que, effectivement, c'était la participation du membre du public aux interrogatoires, mais le reste, quant à la divulgation des documents, ça restait toujours en jeu, hein?

MR. DEARDEN: Yes, I just want to....

THE COURT: So you understand, it was only Justice Hackland's - in my view, only suspended the examinations, but all other elements of the timetable remained in place.

MR. DEARDEN: Right, he only suspended the cross-examinations for the Champerty Motion, but your timelines, Your Honour, for the discovery weren't touched by the memo that Justice Hackland sent.

LE TRIBUNAL: Les interrogatoires, quant à la requête de Me St. Lewis, ça ça commence pas avant le 30 avril, alors ça - il n'y a pas de problème.

M. RANCOURT: M. le Juge, j'accepte cette interprétation. C'était pas explicite dans le mémo, mais j'accepte...

LE TRIBUNAL: Non.

M. RANCOURT: ...cette interprétation.

LE TRIBUNAL: Quant au paragraphe 5, qui traite des interrogatoires au préalable, ça ça reste en place. So, paragraph 5 stays in place.

MR. DEARDEN: And just for the record, Your Honour, there was no need for explicit or implicit because Mr. Rancourt's open court motion specifically said he wasn't asking for the public to be in the examinations for discovery. He was only dealing with cross-examination. So there was no doubt that paragraph 5 of your endorsement on February 8th was unaffected.

LE TRIBUNAL: Paragraphe 5, tout simplement pour confirmer le paragraphe 5, ce qui inclut

l'échéancier pour les interrogatoires au préalable reste en jeu - en place. Alors, c'est la motion qui traite de la champartie qui est affectée.

5 Mais pour revenir au paragraphe 5, au paragraphe 5 b) j'avais prévu que, s'il y avait lieu d'avoir une motion pour un affidavit de documents, un meilleur affidavit de documents, que ce serait entendu demain. Est-ce que - et 10 j'ai vu qu'entre vous, M. Rancourt et M. Dearden, une certaine correspondance, un échange d'une correspondance qui prétend qu'il y a encore des problèmes à cet égard-là.

15 Alors, est-ce qu'il y a lieu d'avoir une motion demain matin? Parce que je n'ai pas vu, dans tous les matériaux, qu'on a été signifié avec des motions.

20 **M. RANCOURT:** Oui. Alors, M. le Juge, j'ai écrit à M. Dearden et je lui ai proposé que, si on ne pouvait pas résoudre ça de façon entre nous, que je vous demanderais de régler la question de son affidavit qui est incomplet, que j'aimerais - j'aimerais en parler un tout petit peu ce matin, là, mais j'aimerais régler cette 25 question-là en vous demandant d'exiger à M. Dearden, c'est-à-dire à sa cliente, qu'il fournisse un affidavit complet à la même date où moi j'avais proposé de fournir un affidavit pour documents qui sera plus complète, c'est-à-dire 30 16 avril.

LE TRIBUNAL: Alors, je voulais savoir, demain il n'y aura pas de motion

M. RANCOURT: Moi, non, parce que j'ai l'espoir que ça puisse se régler aujourd'hui.

MR. DEARDEN: Your Honour, if I could, your paragraph 5 b) was quite explicit, and that was that, if Mr. Rancourt was going to bring a motion attacking the affidavit of documents of Joanne St. Lewis or to want to cross-examine Professor St. Lewis, that was to happen tomorrow and he must serve his Notice of Motion in accordance with the rules.

He never served a Notice of Motion and, therefore, he has not complied with 5 b), and in my respectful submission, what should be happening is exactly what you suggested to Mr. Rancourt to do during the February 8th case conference, which was: Ask your questions during the examination for discovery about documents that you think are missing, and if there is a refusal, or maybe there might even be an answer that gives him clues as to one he thinks is missing - because he's given us no clues other than a name. Then do it there, as you suggested, and that's what, in my respectful submission, Your Honour, he must do because your 5 b) was explicit. You have to serve a Notice of Motion in accordance with the rules, and he didn't do it.

LE TRIBUNAL: Okay, je vais vous arrêter pour un instant. Simplement pour voir - pour les fins de la traduction ce matin, M. Rancourt, à la conférence au mois de février, il y avait des lacunes. On était mal préparé. C'est moi qui a

effectivement fait la traduction. Est-ce que vous insistez ce matin qu'on vous traduise de l'anglais au français ou seulement du français à l'anglais pour....

M. RANCOURT: Non, moi je ne reçois pas de traduction. Je n'ai pas - je n'ai rien....

LE TRIBUNAL: Alors, je vois que les interprètes sont à la - lorsque Me Dearden communique en anglais, les interprètes traduisent de l'anglais au français, puis je vois que vous n'avez pas d'appareil.

M. RANCOURT: Non, c'est pas nécessaire. Je croyais avoir été clair sur cette question-là.

LE TRIBUNAL: Okay. Alors, pour les fins de la transcription, on accepte que les gens parlent en anglais pour les fins de....

M. RANCOURT: Oui, moi j'accepte de recevoir les informations en anglais.

LE TRIBUNAL: Alors, ce n'est pas nécessaire de traduire de l'anglais au français.

L'INTERPRÈTE: C'est noté, M. le Juge.

LE TRIBUNAL: C'est seulement du français à l'anglais.

M. RANCOURT: Mais si j'ai des clarifications à demander, je les demanderai.

LE TRIBUNAL: Alors, moi je - ma question au préalable c'est tout simplement pour m'assurer auprès du personnel et la coordonnatrice des procès à savoir où je devrais me présenter demain matin. S'il y a lieu d'avoir une motion, je devrais communiquer avec elle, autrement je vais faire autre chose demain matin.

M. RANCOURT: Bien sûr. Alors, je peux vous dire, M. le Juge, qu'il y aura pas de motion, je n'ai pas soumis de document de motion. Donc, il y aura pas de motion demain matin.

Par contre, il y a des communications très claires entre M. Dearden et moi. M. Dearden n'a pas raison de dire que le seul indice c'est un nom. Pas du tout. Je lui ai dit le sujet des communications, je lui ai dit la période des communications, je lui ai donné assez d'information qu'il peut facilement demander à sa cliente et vérifier et obtenir ces communications-là.

LE TRIBUNAL: À ce moment - c'est comme je vous avais communiqué au mois de février, comme M. Dearden vient tout juste de le dire, c'est souvent le cas lorsqu'on fait des interrogatoires au préalable, les avocats vont communiquer, "Je m'attends que votre client aurait tels documents," et s'il ne les présente pas lors des interrogatoires, s'il y a lieu d'avoir une question - parce que moi je m'attends, effectivement, que lors de ces interrogatoires, il y a sûrement des questions de refus de répondre à des questions, il y aura certainement des questions d'engagement, il y aura sans doute des motions par la suite.

Donc, au lieu d'apporter une motion au préalable, il est préférable de le faire par la suite. Alors, on verra s'il y aura lieu de, si possible, de trancher la question aujourd'hui, mais pour moi l'important c'est d'établir de

nouveau un échéancier pour la motion de champartie parce que c'est là qui est tombé un peu à l'eau.

Alors, quand je vois - dans la correspondance il y a des questions quant à - est-ce que la transcription serait bilingue ou non, puis ensuite la question de l'échéancier.

M. RANCOURT: M. le Juge, si je peux me permettre juste d'ouvrir une petite parenthèse sur la question de l'affidavit des documents. J'ai pu consulter un avocat hier et, donc, je suis un peu plus éclairé sur cette question de l'affidavit des documents, et il y a une lacune importante dans l'affidavit de Mme St. Lewis, c'est-à-dire que la section B, *Schedule B*, est absolument sans détail.

Et j'ai regardé, j'ai pu regarder les autorités sur cette question-là et ça enfreint les règles et ça va m'empêcher de faire une bonne examination pour *discovery* parce que j'ai besoin de savoir, par exemple, s'il y a eu des correspondances avec des experts-témoins, des choses comme ça, pour pouvoir bien faire mon interrogatoire. Et donc les règles n'ont pas été suivies du tout par rapport à cette affaire, il y a aucun détail, et j'aimerais donc réparer cette situation-là avant d'entrer pour faire l'examination pour *discovery*.

LE TRIBUNAL: Mais vous avez manqué la date, hein? La date pour faire ça c'était - vous avez manqué la date pour faire ça.

M. RANCOURT: Ben, c'est-à-dire que j'ai suivi

vos conseils, M. le Juge, en essayant de résoudre ces choses-là à l'amiable au préalable. Et la dernière chose que j'ai dit, par rapport à la date que j'ai manquée, c'était le 13 mars, j'ai dit dans mon paragraphe 5, une lettre à M. Dearden, j'ai - et ça c'est à l'onglet numéro 9 de mon - du dernier document que je vous ai envoyé.

LE TRIBUNAL: Mais écoutez, il n'y a pas question de retarder les dates pour les interrogatoires au préalable.

M. RANCOURT: Non, M. le Juge.

LE TRIBUNAL: Il n'y a pas lieu du tout, du tout, du tout.

M. RANCOURT: Je veux pas retarder les dates.

LE TRIBUNAL: Ces dates-là, le 30 avril, le 1er mai, tout ça, l'échéancier pour les dates, ça ça reste en place.

M. RANCOURT: M. le Juge, je suis entièrement d'accord avec vous. Je ne veux pas bouger les dates. Je demande une solution très simple à ce problème, et la voici.

Si on regarde le calendrier de ce qui se passe, j'ai - d'ailleurs, j'ai préparé un calendrier pour vous et pour mes collègues, qui est le suivant.

MR. DEARDEN: What are we on here?

M. RANCOURT: Alors, si on regarde ce calendrier, M. le Juge,...

MR. DOODY: Your Honour....

M. RANCOURT: ...je dois....

MR. DOODY: Your Honour....

M. RANCOURT: Si je peux finir.

MR. DOODY: Your Honour....

M. RANCOURT: Je veux juste terminer mon point, s'il vous plaît.

LE TRIBUNAL: Attendez un instant.

MR. DOODY: Your Honour, with respect, my friend - I'm sorry, Mr. Rancourt, rather, is - appears to be about to get into a general discussion about the timelines, and with the greatest of respect to Mr. Rancourt, it's my submission that perhaps we could have an orderly agenda or progression through the issues.

M. RANCOURT: M. le Juge, c'était simplement pour signaler une solution simple pour cette question des découvertes. Alors, vous voyez dans le calendrier que nous sommes le 2, et que le 16 je dois, d'après votre ordre du 8 février, donner un affidavit qui est plus complet. Et je propose que le client de M. Dearden soit obligé de faire la même chose, c'est-à-dire pour la même date, qu'il corrige son affidavit de documents et qu'il fournisse, à la même date où je dois fournir un affidavit complet, un affidavit corrigé, ce qui nous donne le temps de se préparer tous les deux pour les examinations qui vont avoir lieu le 30 avril pour la découverte et ensuite le 1er mai.

Donc, j'ai proposé ça à M. Dearden, je lui ai dit:

If you do not answer by March 20 the question of when you expect to provide all the missing documents from a corrected search, then on April 2 I will ask Judge Beaudoin to require your client to provide a corrected

supplementary affidavit of documents.

LE TRIBUNAL: Vous faites référence à quoi, M. Rancourt?

M. RANCOURT: Pardon?

LE TRIBUNAL: Vous faites référence à - dans votre cahier?

M. RANCOURT: Je fais référence à l'onglet numéro 9.

LE TRIBUNAL: De quel cahier?

M. RANCOURT: Du dernier cahier, c'est-à-dire le cahier du 30 mars.

MR. DEARDEN: What he's doing, Your Honour, is just re-arguing what you just told him he couldn't do, which was he didn't comply with paragraph 5 b) of your case endorsement on February the 8th.

M. RANCOURT: Alors, si vous regardez l'onglet numéro 9, c'était un courriel qui faisait suite à un échange où j'essayais de bonne foi de corriger ce problème, et c'était le dernier échange. J'ai demandé une réponse. Il y a eu aucune réponse après le 13 mars de cette question-là. Donc, moi j'ai supposé qu'il y aurait pas nécessairement une objection de M. Dearden parce que je lui annonçais que j'allais demander aujourd'hui qu'on résolve le problème.

Alors, vous voyez, à mon paragraphe 5, j'ai demandé, "provide a" -:

...I will ask Judge Beaudoin ... to provide a corrected supplementary affidavit of documents by April 16.

LE TRIBUNAL: Non, mais le - malheureusement,

5 M. Rancourt, vous avez soulevé la question de l'affidavit, le document de la demanderesse au 8 février, et vous avez indiqué à ce moment-là qu'il y avait des documents qui manquaient, et on avait prévu ça pour la motion de demain. Vous ne l'avez pas fait.

10 **M. RANCOURT:** C'est vrai, M. le Juge, mais vous m'avez suggéré d'essayer d'arranger les choses à l'amiable, ce que j'ai fait de bonne foi de....

LE TRIBUNAL: Non, mais toutefois si ça....

M. RANCOURT: De - de....

15 **LE TRIBUNAL:** Mais vous avez - malheureusement, vous avez fait cette demande le 13 mars, il y avait suffisamment de temps pour apporter la motion. Donc, vous allez procéder aux interrogatoires et ce sera des questions à poser lors des interrogatoires.

20 **M. RANCOURT:** Je trouve ça dommage que je sois obligé de soumettre un meilleur affidavit de documents alors qu'il y a des lacunes évidentes où on enfreigne les règles carrément de l'autre côté, c'est-à-dire le cédule B est entièrement vide.

25 **LE TRIBUNAL:** Mais nous en avons traité à ce moment-là au 8 février.

M. RANCOURT: Non, cette affaire du cédule B, j'étais pas au courant. J'avais pas encore consulté un avocat sur cette question-là.

30 **MR. DEARDEN:** Come on!

LE TRIBUNAL: Vous avez consulté hier...

M. RANCOURT: Oui.

LE TRIBUNAL: ...apparemment.

M. RANCOURT: Non, j'ai consulté avant - j'ai réussi à le rejoindre hier, mais ça fait des semaines et des semaines que j'essaye de le rejoindre.

LE TRIBUNAL: On a déjà tellement de problèmes avec l'échéancier. On ne change absolument rien. On procède aux interrogatoires, tel que prévu.

M. RANCOURT: Oui.

LE TRIBUNAL: Si vous trouvez qu'il y a des documents qui manquent, vous poserez des questions à ce moment-là. Et s'il y a lieu et si ces documents-là, si M. Dearden refuse à ce moment-là de fournir les documents, il ne les a pas, et vous demandez à ce moment-là qu'il les apporte et le juge qui tranchera la question: Est-ce que ces communications-là sont pertinentes, oui ou non? Mais vous aurez lieu à ce moment-là.

M. RANCOURT: Mon seul problème c'est que je crois que c'est un préjudice contre moi de ne pas avoir accès à un cédule B qui suit les règles en entrant dans l'examen pour la découverte.

LE TRIBUNAL: Bien, là vous n'avez pas parlé du tout de cédule B qui traite des documents privilégiés.

M. RANCOURT: Il y a deux semaines pour corriger la situation avant le 16 avril.

LE TRIBUNAL: Mais là on parle de documents qui, en principe, on ne doit pas divulguer.

M. RANCOURT: Tout à fait. Et donc, il faut pouvoir argumenter si on doit les divulguer ou pas, s'ils sont dans le bon cédule, mais pour ça il faut les voir.

LE TRIBUNAL: Malheureusement, on a traité de cette question le 8 février, on n'y retourne pas. À ce moment-là on procède aux interrogatoires, tel que prévu. Si vous avez des questions à propos des documents qui manquent, à ce moment-là vous les poserez lors des interrogatoires. Il n'y a pas lieu maintenant de faire une autre motion entre cette date et le 30 avril parce qu'effectivement il y a d'autres choses à faire.

M. RANCOURT: Mais je demande pas de faire une motion, M. le Juge. Soyons clairs sur cette question-là. Je demande simplement qu'on demande....

MR. DEARDEN: No. I'm objecting, Your Honour. I'm objecting. He's repeating, again, what you've already told him he couldn't do. And unfortunately, Your Honour, I have to put on record how troubled I am with what is happening here.

First of all, I was never advised before three minutes ago by Mr. Rancourt that he had a problem with Schedule B of Professor St. Lewis' affidavit of documents.

Secondly, if I'm understanding the translation correctly, he's trying to get a document that he should have brought a motion about, pursuant to 5 b) of your endorsement, and

5 didn't do, but he's trying to get that because he's concerned about experts. He can ask, under the rules, during discovery: Do you have an expert or experts, and what is the gist of their opinion? He can ask that question. He's not prejudiced whatsoever.

10 But more troubling, what he's talking about that's missing, this is documents that he alerted me to, Your Honour, of Hazel Gashoka. She was at the February 8th conference; she was also at the proceedings before - several other proceedings in the past. She's a supporter of Mr. Rancourt.

15 **M. RANCOURT:** Là je m'objecte, M. le Juge.

20 **MR. DEARDEN:** Excuse me. Excuse me. A supporter, and what he was gonna just do there was say, "No, she isn't." I've got in the discovery documents, Your Honour, that they met. Hazel Gashoka and Joseph Hickey meet with Mr. Rancourt about this lawsuit and how he'll defend it. So, partisan is humble - is being quite polite, I respect, but at any rate he knows what the documents are. I don't know what he's talking about, and I asked him to produce them. He says, "I don't have them." He could just ask her, and that's all I was asking him to do, was, "Give them to me, show them to me. I don't know what you're talking about." So it's in his...

25 **M. RANCOURT:** C'est faux, M. le Juge.

30 **MR. DEARDEN:** ...power to get them.

M. RANCOURT: Je n'ai pas....

LE TRIBUNAL: Bien, en tout cas, la question de

la motion n'aura pas lieu demain. Vous avez manqué le temps. Donc, vous procédez aux interrogatoires.

La deuxième question ça revient à la motion de champartie, qui doit reprendre - on reprend l'onglet 4 - le paragraphe 4.

M. RANCOURT: Oui, de votre?

MR. DOODY: Tab 4 of what, Your Honour?

LE TRIBUNAL: Est-ce que - paragraphe 4. Donc, on avait prévu....

MR. DOODY: Oh, paragraph 4, yes, sorry. The translator said, "Tab 4."

THE COURT: Paragraph 4 of the case conference, that's what has to be redone, the Champerty Motion.

MR. DOODY: Right.

LE TRIBUNAL: 4 a), la requérante et l'Université devraient déposer leurs affidavits en réponse avant le 21 février. Ç'a été fait?

M. RANCOURT: Excusez-moi, je....

MR. DOODY: That was done, Your Honour.

MR. DEARDEN: J'ai pas suivi le dernier point. Je m'excuse.

LE TRIBUNAL:

The Plaintiff and the University will deliver their responding affidavits by February 12....

Donc, les affidavits de la part de madame - de maître - la requérante, Me St. Lewis, et de l'Université. Ç'a été déposé le 21 février.

M. RANCOURT: Oui.

LE TRIBUNAL: Bon. 4 b). 4 b), c'était prévu qu'il y aurait peut-être une question à propos

de M. Giroux, s'il se présentera comme témoin, et si je comprends bien de la part de M. Doody, M. Giroux, il est prêt à être - avoir - se faire interroger sur la question.

MR. DOODY: Mr. Rancourt served a summons, which I accepted service of on Mr. Giroux's behalf, on the 13th of February. In fact, he was out of the country, but I accepted service.

LE TRIBUNAL: Puis on avait prévu, c'est le paragraphe c), 4 c), si M. Giroux était disponible, son interrogatoire aura lieu le 13 mars.

4 d), il y a pas lieu. 4 d) does not apply. Alors, ça nous prend les interrogatoires, les dates pour les interrogatoires de M. Giroux.

M. RANCOURT: Je tiens à signaler, M. le Juge, et peut-être qu'il y a quelque chose que je comprends pas, mais vous avez ordonné en 4 c) que, s'il y avait pas d'objection à ce que M. Giroux se présente, qu'il devait être interrogé soit le 12 mars ou le 13 mars.

LE TRIBUNAL: Sujet - mais on ne connaissait pas sa disponibilité.

M. RANCOURT: D'accord.

LE TRIBUNAL: Donc, c'était prévu, c'était sous condition qu'il serait disponible. Donc, il faut fixer une date pour les interrogatoires de M. Giroux, Mme...

M. RANCOURT: Pour simplifier les dates....

LE TRIBUNAL: ...St. Lewis, apparemment il y a M. Rock qui sera interrogé.

M. RANCOURT: Oui.

5 **MR. DOODY:** Mr. Rock will have to be cross-examined and, in addition, Your Honour, Dean Feldthusen and a lawyer by the name of Céline Delorme. So, the two affidavits filed by the University were for Mr. Rock and Ms. Delorme.

THE COURT: Delorme?

MR. DOODY: D-E-L-O-R-M-E.

10 **LE TRIBUNAL:** Et le doyen, Me Feldthusen, est-ce qu'il a déposé un affidavit? Ah, de la part. Okay, d'accord.

Me DOODY: Oui, yes.

LE TRIBUNAL: Donc, ça prend un-deux-trois-quatre-cinq interrogatoires.

15 **M. RANCOURT:** Oui. En fait, six, M. le Juge, parce qu'il y a moi aussi qui....

LE TRIBUNAL: Bien, par la suite,...

M. RANCOURT: Oui.

20 **LE TRIBUNAL:** ...mais il va falloir que vous faites vos interrogatoires avant que vous puisse [sic] déposer un affidavit, hein?

25 **M. RANCOURT:** Non. C'est-à-dire que la condition dans les règles, M. le Juge, c'est que je puisse examiner mon témoin, M. Giroux, avant que j'examine les autres en contre-examination, les affiants. Ça c'est la règle. J'ai amené des autorités par rapport à ça, et je l'ai déjà expliqué en lettre à M. Dearden et à M. Doody. Donc - mais moi, moi que je sois examiné, si je comprends bien, ça peut se faire même avant. Et c'est pour ça que je propose une solution rapide. M. Dearden a suggéré que je sois examiné le 24 avril....

30

LE TRIBUNAL: Mais la question c'est - c'est pas de vous faire examiner. C'est la question, si vous voulez déposer un affidavit supplémentaire.

M. RANCOURT: Oui, absolument. Je m'attends à déposer un affidavit supplémentaire...

LE TRIBUNAL: Mais là il faut faire....

M. RANCOURT: ...ayant examiné mon témoin, M. Giroux.

LE TRIBUNAL: Mais il va falloir que vous faites tous vos examens, si je crois bien, avant de déposer un affidavit supplémentaire.

M. RANCOURT: Non, M. le Juge, c'est le contraire. Je dois faire mes examens uniquement après avoir déposé mon affidavit supplémentaire. J'ai des autorités à ce sujet-là. C'est très clair. La loi est très claire sur cette question-là. Je peux - si vous voulez, je peux lire un paragraphe dans les autorités.

Alors, la séquence est la suivante, M. le Juge. Tous les témoins doivent être examinés en premier, ensuite ça peut donner lieu à des affidavits supplémentaires, et ensuite on fait les contre-examinations sur affidavit. Ça c'est la suite qui est consistante avec les règles et qui est celle qui est décrite dans la jurisprudence.

Et la raison est que - la raison est que les nouveaux affidavits pourraient donner lieu à des nouvelles contre-examinations, et donc c'est plus efficace de faire toutes les contre-examinations en même temps. Vous voyez? Alors, ça c'est le - la procédure. J'ai amené des

autorités que je peux distribuer, si vous voulez, sur cette question-là.

MR. DOODY: Master Beau... - sorry, I'm sorry, Your Honour. Perhaps we could start with Mr. Giroux. I think nobody has a problem with Mr. Giroux being cross-examined - sorry, examined first. Why don't we set that date, and we propose, as I proposed in my letter of some three weeks ago, that Mr. Giroux be examined on Wednesday of this week, in the morning. That was the proposal I made, as I say, some three weeks ago, and Mr. Giroux is available in the morning of this week, on Wednesday.

M. RANCOURT: Bon, M. le Juge, il semblerait que possiblement vous n'avez peut-être pas eu le temps de lire les documents, mais là il y a un gros problème parce que, comme vous voyez dans mon document du 30 mars, j'ai annoncé - j'ai intitulé une section qui s'appelle "Misconduct of Opposing Counsel in Relation to Setting Dates". Et là j'ai expliqué que les - mes opposants prétendent que je - qu'ils ont appris que, le 22 mars, que je n'étais pas disponible, que je refusais leurs dates, alors que le 6 mars je leur ai dit très clairement, et on peut voir tout de suite, immédiatement les dates où je n'étais pas disponible.

Et si vous tournez à l'onglet numéro 3, vous allez voir que le 6 mars, il y avait un courriel envoyé à la cour et à mes opposants disant exactement - vous voyez en bas de page, "I am not available," et il y a des *bullets* à la

page 1, et je donne les temps où je ne suis pas disponible et je donne les raisons de façon brève pourquoi je ne suis pas disponible à ces dates-là.

Immédiatement, immédiatement suivant cela, on a choisi des dates exactement quand je n'étais pas disponible. Et on a questionné ma disponibilité, on a questionné les représentations que je faisais de ma disponibilité, M. le Juge, et là vous pouvez voir ce questionnement de ma disponibilité. Alors, c'était - je vais trouver rapidement. C'était à l'onglet 4. À l'onglet 4....

LE TRIBUNAL: Mais c'est quoi le problème le 4?

M. RANCOURT: Le problème c'est que j'ai clairement des dates où je ne suis pas disponible, que j'ai annoncé....

LE TRIBUNAL: Mais c'est quoi le problème le 4?

M. RANCOURT: Ah, j'ai une lettre de mon syndicat qui explique ce problème. Alors, la lettre de mon syndicat, elle est le - donnez-moi quelques secondes, là. Je vais faire ça dans l'ordre. C'est l'onglet 6. L'onglet 6, il y a une lettre détaillée de l'avocat principal qui s'occupe de ma défense par rapport à mon syndicat.

LE TRIBUNAL: Mais Me McGee n'indique pas que vous êtes - il est nécessaire de vous voir le 3 ou le 4 avril.

M. RANCOURT: Ici il dit très clairement dans sa lettre:

To prepare properly for this phase of the hearing, [it would -] I would

expect it to take three to four days
during the week before each hearing
block.

5 Et donc, il explique en détail toutes les choses
qu'on doit faire ensemble. Et depuis cette
lettre, je peux vous dire qu'il s'est ajouté des
choses. Par exemple, il y a quelque chose qui
est survenu, et on doit maintenant choisir une
date de rencontre exactement cette semaine pour
résoudre cette chose-là avant l'arbitrage qui
10 vient la semaine prochaine. Et pour toutes les
choses que je vous dis, M. le Juge, j'ai amené
des preuves. J'ai amené des preuves de la
nouvelle chose qui est survenue, j'ai amené des
preuves de courriels où mon syndicat me dit, "Il
15 faut qu'on se rencontre, il faut qu'on prenne
une date où on est tous disponible cette
semaine."

Donc, j'ai annoncé ça immédiatement, et
depuis il y a des nouvelles choses. Il y a deux
20 nouvelles choses qui sont survenues. Il y a
cette nouvelle - nouveau *meeting* en plus de
toute la préparation et des choses que monsieur
- que M. Sean McGee explique dans cette lettre.
Il y a un nouveau problème où on doit se
25 rencontrer cette semaine, où on est en train de
chercher des dates, et il y a aussi, il m'est
arrivé en même temps le IPC qui exige que je
fasse mes soumissions...

30 **MR. DEARDEN:** We don't have that.

M. RANCOURT: ...avant....

MR. DEARDEN: We don't have that, do we?

M. RANCOURT: Non, vous ne l'avez pas, et je ne

5 vais pas vous le donner. Je peux le montrer au juge, c'est privé, et j'ai une preuve ici que je peux le montrer au juge s'il le demande, mais je - ça sera à M. le Juge de décider si vous devez le voir ou pas. Mais j'ai ici une lettre du IPC qui me donne un échéancier....

10 **MR. DEARDEN:** No. Your Honour, we're objecting. We're objecting because we don't do things in secret. He's not going to just hand you up something and....

LE TRIBUNAL: Il faut - s'il y a un document qui vous excuse, il faudrait le donner à la partie adverse.

15 **M. RANCOURT:** Tout ce que je dis, M. le Juge, c'est que ces documents sont *privileged*, et si vous - d'abord, je pense pas que....

LE TRIBUNAL: Il faut....

M. RANCOURT: D'accord.

LE TRIBUNAL: Arrêtons.

20 **M. RANCOURT:** Je ne veux pas....

LE TRIBUNAL: Arrêtons un peu, M. Rancourt, s'il vous plaît.

M. RANCOURT: Pardon?

25 **LE TRIBUNAL:** Ça nous prend une date pour examiner.

M. RANCOURT: Oui.

LE TRIBUNAL: Est-ce qu'il y a d'autres dates pour M. Giroux?

M. RANCOURT: Oui, absolument. Alors....

30 **LE TRIBUNAL:** Attendez, je demande à M. Doody, s'il vous plaît.

M. RANCOURT: Pardon?

LE TRIBUNAL: Je demande à Me Doody.

MR. DOODY: Your Honour, the difficulty is getting dates that Mr. Giroux, Mr. Rock and the other witnesses are available.

5 I wrote to Mr. Rancourt on March the - I think March the 7th setting out these dates, and he had already told the Court the day before, or two days before, that he purported to be unavailable on certain dates. I then wrote and said, "These are the dates we're proposing. We need to fit this in." Among the things Mr. Rancourt said was, "I can't do this on a Thursday because I have a radio show which starts at 5:00 p.m."

15 In fact, as I showed the Court, Mr. Rancourt's arbitration regularly sits on Thursday, and the letter from the arbitrator setting the dates, two of which are Thursdays in a week this week - this month and next month, it's going to sit on Thursdays. So I pointed that out to Mr. Rancourt. He didn't respond.

20 Mr. Rancourt indicated in his e-mail to the Court that he was unavailable this week and next week due to the labour arbitration. What I pointed out was the labour arbitration was not sitting this week, it was sitting next week. So some three weeks ago, I suggested the dates of the 4th and 5th of this week to cross-examine some of the witnesses. Mr. Rancourt did not provide a response to that until last Friday at 4:20 p.m. when I received a lengthy pile of material from Mr. Rancourt by e-mail, which

25

30

included the letter from Mr. McGee dated March the 5th.

For the first time on Friday last, at 4:20 p.m., Mr. Rancourt advised me and Mr. Dearden that his lawyer claimed that he needed to be able to consult with him.

With the greatest of respect to my friend, Mr. McGee, he could have consulted with Mr. Rancourt at times other than the times we proposed for this.

Mr. Rancourt with - has consistently, since I came on the scene in this matter, and from what I've seen for some time prior to that, done anything and everything in his power to avoid this matter moving forward.

We've proposed Mr. Giroux for Wednesday. In my respectful submission, there's no adequate reason why that couldn't be done. This is not going to be a long examination. Mr. Giroux will say he knows nothing about this decision other than what he was told when it was reported to the Board by Mr. Rock, as Mr. Rock has sworn to in his affidavit with which Mr. Rancourt has been served.

So this is not a long examination. This should take five minutes. I am sure with Mr. Rancourt doing the questioning, it will take longer than that, but the difficulty is when you start saying, "Okay, we're not going to do Mr. Giroux or Mr. Rock this week," then we are into a long problem because, according to Mr. Rancourt, he's not available to do this next

5 week. And then you get into Mr. Rock's availability, who understandably has a difficult schedule, as does Mr. Giroux, as does Ms. Delorme, who's a practicing litigation lawyer. She has some dates which are available. But Your Honour is familiar with the difficulty in setting these things.

10 We've proposed dates when the witnesses are available. Mr. Rancourt has consistently said "no" for this reason, that reason or the other reason, and in my respectful submission, if this matter is going to move forward, as it ought to, the date should be set, and it should be set to examine Mr. Giroux, as the first step, Wednesday.

15 **THE COURT:** The other thing about the Order of the delivery of affidavits that Mr. Rancourt is talking about for cross-examinations and delivery of supplementary affidavits is another issue.

20 **MR. DOODY:** I think that's another issue, Your Honour. I think, as I understand the rules, Mr. Rancourt cannot provide a responding affidavit after he starts to cross-examine any of the witnesses produced by either Mr. Dearden or myself without leave of the court.

25 And we had told him in my letter of March 7th, so on the second page of my letter of March 7th, which is Tab 3 of the materials filed by Mr. Dearden, I wrote:

30 Mr. Rancourt submits that he must examine Mr. Giroux before he cross-examines other witnesses. His concern is that he may wish to file a

supplemental affidavit as a result of the evidence given by Mr. Giroux, and Rule 39.02(2) prevents him from filing an affidavit after he has cross-examined on an opponent's affidavit. Our proposal has Mr. Giroux being cross-examined first.

Furthermore, we are prepared to consent to Mr. Rancourt conducting cross-examinations of Mr. Rock and Dean Feldthusen and then subsequently filing a supplemental affidavit responding to matters raised by his examination of Mr. Giroux so long as that supplementary affidavit is served and filed by April 12, 2012. That will allow us sufficient time to prepare to cross-examine Mr. Rancourt on his affidavits on April 24.

Which is the date we've proposed for that cross-examination.

So that if Mr. Rancourt's concern is he wants to be able to file a supplemental affidavit in respect of what he hears from Mr. Giroux, we're content that he do that on or before April 12th.

If his concern is that he wants to file an affidavit responding to questions raised by his cross-examination of Mr. Rock or Dean Feldthusen or Ms. Delorme or Ms. St. Lewis, then he's going to have to follow the rules, which is he's going to have to get leave from the Court, but that will happen in any event.

If his concern is about to file an affidavit following what he hears from Mr. Giroux in respect of those matters, we're prepared to give him an indulgence to get this matter moving.

LE TRIBUNAL: Pour la date de....

MR. DEARDEN: Your Honour, if I could just put on the record, because we don't know where this

5 may ultimately end up from whatever is decided
in today's case conference, Mr. McGee's March
5th letter - that is, Mr. Doody pointed out to
the Court - was served on us late on Friday
afternoon.

10 The witness that they're talking about that
supposedly Mr. McGee and Mr. Rancourt are going
to be booked all day tomorrow, all day on
Wednesday, all day Thursday, preparing for, he
testified - he's already started to testify back
in February. Okay? There is - my understanding
is there's been no new developments whatsoever
since this witness has already started
15 testifying in that labour hearing. All of this
preparation could have been done in February, in
March, but no, Mr. Rancourt waits until Friday
afternoon and says - gives us a March 5th letter
from Mr. McGee which, in my submission, doesn't
20 say what Mr. Rancourt is saying because I - I'll
go out on a limb and say there's no way that
he's booked all day the rest of today, all day
tomorrow, all day Wednesday, all day Thursday.
There's no way.

25 And he's saying in the bottom - in the last
paragraph on the first page, what Mr. McGee says
is that it's not sufficient -:

30 ...not efficient for Prof. Rancourt to
prepare and meet with us many weeks in
advance requiring him to again conduct
a significant review prior to hearing.
Similarly, final preparation for his
evidence should be done as close as
possible to the hearing dates.

His evidence, meaning Mr. Rancourt's evidence,
as I understand it, isn't going to happen until

5 May. We're talking about dates that we proposed three weeks ago for Mr. Giroux, the Chair of the Board, a President of the University and a Dean of the Faculty that would happen on Wednesday and - or Thursday of this week, and we think that he's had plenty of time to prepare for that, and it should go forward, in my respectful submission, on those dates proposed.

10 **M. RANCOURT:** Bon, merci. Alors, je - d'abord, j'estime qu'il y a vraiment une asymétrie, un manque de respect. J'explique les dates où je ne suis pas disponible, et on est en train d'argumenter en détail en examinant les
15 évidences que j'avais pas besoin de fournir pour démontrer ces disponibilités-là, que j'ai fait en essayant de résoudre la chose une fois pour tout.

20 On veut examiner les détails de ça, on questionne ça. Moi je ne questionne pas du tout les représentations par rapport aux disponibilités des autres témoins, et je m'attends à avoir le même respect, le même pied d'égalité. Nous sommes des partenaires égaux. Il y a plus de trois semaines j'ai dit les dates
25 où je n'étais pas disponible. Il y a plein de dates où je suis disponible, il y a entièrement de dates où je suis disponible.

30 Par exemple, M. Giroux, je serais prêt à l'examiner n'importe quand dans la semaine du 15 ou 22, en excluant les quelques "X" là que j'ai mis dans mon calendrier. Je serais prêt à l'examiner dans ce bloc de deux semaines après

mon *arbitration*. Et, donc, je demande quelles sont les disponibilités de M. Giroux dans ces deux semaines-là, et je demande les disponibilités de M. Giroux depuis - depuis plusieurs semaines, depuis des mois, et on ne me répond jamais par rapport aux disponibilités. On me donne une date et c'est tout.

Et, donc, s'il y avait des possibilités dans ces deux semaines après la semaine du 8 où je vais être examiné - j'attends mon tribunal par rapport au travail depuis trois ans, M. le Juge. Ça demande beaucoup de travail, c'est très intensif, il y a des nouveaux développements à chaque fois qu'un témoin ouvre la bouche, contrairement à ce que M. Dearden vient de dire, et je ne veux pas qu'on vienne chercher dans ce bloc que j'ai absolument besoin, que j'ai planifié, que je continue à planifier avec mon syndicat pour préparer ces journées très importantes pour moi dans un cas très important alors qu'il y a plein d'autres semaines.

Je leur ai dit immédiatement "ces dates-là je suis pas disponible, choisissons ailleurs", et ils insistent, ils insistent et ils se battent d'acharne-pied pour aller chercher des dates où je ne suis pas disponible, et ça je ne comprends pas. Alors, je trouve que c'est une injustice assez importante et que c'est un manque de respect d'aller examiner les raisons que je ne suis pas disponible. On ne devrait pas être en train de discuter de cette question-là.

LE TRIBUNAL: Okay, assoyez-vous. Me Doody, à propos des dates, et Me Dearden, que M. Rancourt propose, est-ce qu'elles sont disponibles à vos clients?

MR. DOODY: Mr. Giroux, Your Honour, Mr. Giroux is available on the 17th and on the 18th. Mr. Rock, however, is available on the 17th in the afternoon and on the 18th in the afternoon.

So, if we did this, we could do Mr. Giroux in the morning of the 18th, and Mr. Rock in the afternoon of the 18th. Neither Mr. Dearden or I are agreeable to cross-examining Mr. Rancourt on the 16th before Mr. Giroux has been examined. That would be inappropriate, in my respectful submission, since the evidence would not yet begin on the motion, and since Mr. Rancourt has indicated he's going to file a supplementary affidavit. We'd have to do it twice.

M. RANCOURT: Alors, c'est - d'abord j'aimerais....

LE TRIBUNAL: Selon votre calendrier, il y a absolument rien ce jour-là.

M. RANCOURT: Pardon?

LE TRIBUNAL: D'après votre calendrier, il y a absolument rien ce jour-là.

M. RANCOURT: Alors, j'aimerais proposer la chose suivante. Les opposants ont proposé que je sois examiné le 24 avril; j'accepte cette date. Premièrement, on peut régler ça.

LE TRIBUNAL: Et il faut - il va....

M. RANCOURT: Et deuxièmement....

LE TRIBUNAL: Non, mais....

5
M. RANCOURT: Et deuxièmement, j'accepte que M. Giroux - de l'examiner, par exemple, le 18, mais je n'accepte pas d'examiner M. Rock immédiatement après, et je vais vous expliquer....

LE TRIBUNAL: Ah non, il faut que ce soit fait immédiatement.

M. RANCOURT: Mais je vais expliquer pourquoi.

10
LE TRIBUNAL: Non, ce sera les deux en même temps,...

M. RANCOURT: M. le Juge,...

LE TRIBUNAL: ...même date.

15
M. RANCOURT: ...avec tout respect, un est un témoin et l'autre est examiné sur affidavit et....

LE TRIBUNAL: Vous avez eu suffisamment de temps à préparer.

20
M. RANCOURT: Non, c'est pas une question de préparer. C'est une question que, en principe, il doit y avoir le temps pour que tous les évidences soient entrés. Vous voyez, M. le Juge, il y a une chose que - mes opposants ont caractérisé pourquoi je voulais examiner M. Giroux avant d'une certaine façon, et j'ai pas eu la chance de dire moi pourquoi et - donc, d'une part il y a....

25
LE TRIBUNAL: C'est la motion de champartie, c'est uniquement ses connaissances, ses preuves à propos de cette motion-là.

30
M. RANCOURT: Tout à fait, et ce que je dis c'est la chose suivante, M. le Juge.

LE TRIBUNAL: 18 avril, vous allez examiner M.

Giroux et M. Rock, ou non, ça va. Donc, le matin, le 18, M. Giroux, et à 2h00, M. Rock.

Me DOODY: Merci, M. le Juge.

LE TRIBUNAL: À 10h00, M. Giroux; 2h00, M. Rock.

M. RANCOURT: Alors, M. le Juge, je veux juste m'objecter à - au fait, juste pour maintenant, pour le dire sur le record, que je dois immédiatement examiner M. Rock parce que - pour la raison suivante. Normalement, j'aurais le droit de savoir tout ce que M. Giroux va amener et de préparer avant d'examiner les autres témoins, et ça ne va pas me donner le temps de préparer à partir des réponses de un.

LE TRIBUNAL: Vous allez examiner - oui, je comprends. Vous allez examiner M. Rock à 2h00 le 18. Donc, ça prend encore Mme St. Lewis, Me St. Lewis, Me Feldthusen et Me Delorme.

MR. DEARDEN: And if we could, Your Honour,...

M. RANCOURT: Est-ce que....

MR. DEARDEN: ...deal with Professor - excuse me. Could we deal with Professor St. Lewis. She's already been booked April 23rd, and I've not heard any disagreement with Mr. Rancourt on Professor St. Lewis going on the 23rd. Right now, we had proposed Dean Feldthusen to be cross-examined April the 5th, Your Honour, and in anticipation that our proposed dates may not hold today, I asked Mr. - or Dean Feldthusen if he would be available April 23rd, and he is.

So I'm respectfully submitting that Professor St. Lewis be examined in the morning or afternoon of April 23rd, and Dean Feldthusen

be examined either the morning or the afternoon of April 23rd.

LE TRIBUNAL: Le 23 c'était déjà disponible pour - une date qui vous était disponible?

M. RANCOURT: C'est-à-dire que j'ai mis des "X" firmes [sic] sur des dates fermes, mais dans la période, les deux semaines où j'ai déjà deux examinations et où j'accepte d'être examiné le 24, qui est leur date, est-ce qu'on pourrait fixer celle-là où je suis examiné le 24?

LE TRIBUNAL: Mais attends, le 23 ça va pour Joanne St. Lewis et M. Rock. C'est disponible, selon votre calendrier.

M. RANCOURT: Non, M. Rock on l'a déjà mis le 18, M. le Juge.

LE TRIBUNAL: Me Feldthusen.

M. RANCOURT: C'est-à-dire - qu'est-ce que vous - qu'est-ce - non. Non, j'essaye d'expliquer pourquoi j'aimerais mettre ces examinations-là dans la semaine du 20 mai.

LE TRIBUNAL: Non, non, le 23 vous êtes disponible.

M. RANCOURT: Non, je ne suis pas disponible parce que dans cette....

LE TRIBUNAL: Bien non, d'après votre calendrier, vous êtes disponible.

M. RANCOURT: Non, M. le Juge, je - ça ce sont les dates qui sont absolument bloquées, mais dans cette période-là je dois faire les choses suivantes. Je dois préparer *discovery* et je dois répondre au IPC, une soumission importante.

LE TRIBUNAL: Le 23 janvier [sic], vous allez

examiner. Si vous voulez contre-interroger....

M. RANCOURT: Pardon?

LE TRIBUNAL: Si vous voulez contre-interroger Me St. Lewis et Me Feldthusen, vous devriez le faire le 23 avril.

M. RANCOURT: Pas les deux le même jour.

LE TRIBUNAL: Oui.

M. RANCOURT: Parce que normalement on avait prévu, même avec ce qu'eux proposaient, c'était une journée chaque.

Me DEARDEN: Non. Non.

LE TRIBUNAL: Non, non, ça c'est l'affidavit sur la motion de champartie. C'est pas des interrogatoires au préalable. La portée est très restreinte.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc, le 23 avril pour Me St. Lewis, à 10h00; Me Feldthusen, à 2h00.

MR. DOODY: May I suggest, Your Honour, Ms. Delorme then - just to make sure this is right - Ms. Delorme on the morning of the 24th, and Mr. Rancourt in the afternoon of the 24th. Then I believe we have it all.

LE TRIBUNAL: Bon, ça va? Le 24, vous êtes disponible, d'après votre calendrier.

M. RANCOURT: Ça va, mais j'aurais préféré passer en premier ce matin-là.

LE TRIBUNAL: Non, vous allez faire Me Delorme à 10h00 et vous serez interrogé vous-même à 2h00. Ça va? Donc - et l'échéancier quant à la requête en libelle diffamatoire, le paragraphe 5 demeure en jeu.

Alors, ce que je propose....

M. RANCOURT: Il y a quand même - excusez-moi. Juste signaler que, d'après les règles, comme c'est ma motion, normalement j'aurais l'option d'examiner dans l'ordre que j'estime est la bonne pour ma motion...

LE TRIBUNAL: Non, mais c'est....

M. RANCOURT: ...et je n'ai pas eu la chance de faire ça.

LE TRIBUNAL: Mais j'ai - en tout cas, j'ai le droit d'établir un échéancier. Il faut faire cet échéancier. Si vous voulez apporter une motion pour arrêter les procédures moins - le fait que l'Université va payer les frais de Me St. Lewis, il faut que cette question soit tranchée. Il y a eu un retard déjà. Alors, il faut se rattraper. Donc, c'est pour ça j'ai fixé ces dates-là. Donc, c'est prévu - le 18 avril....

M. RANCOURT: M. le Juge, d'après moi, ce n'est pas une question d'arrêter que les frais soient payés, ce n'est pas une question de retard. C'est une question que l'action elle-même est...

LE TRIBUNAL: Ça je le comprends.

M. RANCOURT: ...inappropriée et que....

LE TRIBUNAL: Ça je le comprends.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça je le comprends.

M. RANCOURT: D'accord.

LE TRIBUNAL: Mais - alors, c'est très important de traiter cette question le plus vite. Donc, le 18 avril, M. Giroux le matin; Me Rock dans

l'après-midi. Le 23 avril, Joanne St. Lewis le matin; dans l'après-midi, Bruce Feldthusen. Le 24, Me Delorme le matin; et à 2h00, c'est vous, M. Rancourt.

M. RANCOURT: Est-ce que le matin, l'heure c'est 10h00?

LE TRIBUNAL: 10h00, toujours 10h00. Dans l'après-midi, 2h00. Understood? Ten o'clock in the morning; two o'clock.

Là il y a la question de la transcription. On parle de la question de la transcription. Est-ce qu'il y aura une transcription bilingue?

MR. DEARDEN: Sorry to interrupt, Your Honour. Before we get on a new issue, we need to decide a date for Mr. Rancourt's supplementary affidavit after he examines Mr. Giroux. I don't think we dealt with that.

THE COURT: We can deal with that or we can deal with the bilingual transcript. Both of those have to be dealt with.

MR. DEARDEN: But this was all the crosses, so it just....

M. RANCOURT: Donc, si j'ai bien compris, mes opposants ont accepté que je mette mon affidavit par rapport à M. Giroux après même les examinations. Ils me l'ont déjà dit en écrit, puis ils l'acceptent. Évidemment, les échéanciers sont tels que ça peut pas être autrement.

LE TRIBUNAL: Alors, votre affidavit supplémentaire, ce sera déposé par quelle date? Are you accepting that he supply - or do you

want it....

MR. DOODY: Your Honour - sorry, I'm sorry.

THE COURT: Are you accepting - no, that's all right. Are you accepting that he can deliver a supplementary affidavit, or are you expecting him to bring a motion for leave?

MR. DOODY: Just so that I'm very clear for - more for Mr. Rancourt's perspective than yours, Your Honour, there are two, in my submission, there are two kinds of supplementary affidavits.

The first is in respect of matters raised by his examination of Mr. Giroux.

THE COURT: Who's a witness.

MR. DOODY: Who's a witness and has not sworn an affidavit, and Mr. Rancourt has said he doesn't know what Mr. Giroux is going to say and he wants to be able to file an affidavit responding to new things raised by Mr. Giroux. And Mr. Dearden and I are content that he do so, he be able to do so without leave so long as it is served and filed within a reasonable period of time prior to our cross-examination of him, and that, in my submission, would be the 20th, two days after he examines Mr. Giroux.

THE COURT: But there's - I think there's the issue of a supplementary affidavit with respect to the examinations for which he needs leave.

MR. DOODY: For which he needs leave, and so that was my second point. If he's going to file a supplementary affidavit in respect of matters raised on the other cross-examinations, that's Mr. Rock, Professor St. Lewis, Dean Feldthusen

5 or Me Delorme, he needs leave, and he's going to have to seek leave. We may or may not oppose that leave. It depends what it is he wants to file, but that's going to have to be dealt with then.

LE TRIBUNAL: Vous comprenez la distinction.

M. RANCOURT: Je crois comprendre que....

LE TRIBUNAL: M. Giroux, c'est un témoin.

M. RANCOURT: Oui.

10 **LE TRIBUNAL:** Un témoin, on ne sait jamais ce qu'il va dire. Donc, on prévoit qu'un témoin pourrait déposer certains faits; on voudrait répondre. Donc, de la part de son témoin, Me Doody dit carrément vous avez la permission de déposer un document supplémentaire, mais il faudrait que ce soit fait avant qu'on vous interroge, qui est le 23.

M. RANCOURT: Le 24.

20 **LE TRIBUNAL:** Le 24 plutôt. Je m'excuse. Mais pour les autres témoins, ils ont déjà témoigné. On sait ce qu'ils vont dire. Alors, la règle - il va falloir, si vous voulez déposer un affidavit supplémentaire, là ça prend la permission du Tribunal. Vous comprenez?

25 **M. RANCOURT:** Oui, absolument.

LE TRIBUNAL: Donc, pour répondre à Rock, St. Lewis, Feldthusen et Delorme, ça prend une motion, ça prend la permission de la cour.

M. RANCOURT: Oui.

30 **LE TRIBUNAL:** Alors, vous comprenez la distinction.

M. RANCOURT: Oui.

5 **LE TRIBUNAL:** Alors, ce que Me Doody avait dit, que si vous allez déposer un affidavit supplémentaire en réponse à M. Giroux, que vous le faites avant le 24 avril parce qu'à ce moment-là on va vous interroger. À ce moment-là vous aurez un affidavit supplémentaire.

10 **M. RANCOURT:** D'accord. M. le Juge, je pourrais l'amener, le 24 au matin je pourrais leur donner, ou je pourrais le donner le 23 au matin quand nous allons être là, comme ça ça me donne la fin de semaine de plus pour le préparer. Donc, soit le 23 ou le 24.

15 **LE TRIBUNAL:** Le 23? Le 23.

MR. DOODY: The Monday morning.

20 **LE TRIBUNAL:** Ce serait uniquement le témoignage de M. Giroux.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça va le 23?

25 **MR. DEARDEN:** Yes.

MR. DOODY: Yes.

30 **LE TRIBUNAL:** Il y a la question de la transcription bilingue. Alors, je veux savoir, de ces témoins, toutes les personnes qui seront examinées à l'exception de vous-même vont donner leur témoignage en anglais? M. Giroux....

M. RANCOURT: On ne m'a pas confirmé ça.

LE TRIBUNAL: M. Rock, Joanne St. Lewis, Bruce Feldthusen, Me Delorme, est-ce qu'ils vont donner leur témoignage en anglais?

MR. DOODY: I believe the answer is yes, and as Mr. Rancourt said, Mr. Giroux, I'm not sure. He's been out of the country. I expect he'll

testify in English, but I don't know. He may testify in French.

LE TRIBUNAL: Mais comme nous savons présentement, c'est uniquement vous-même, vous allez communiquer - parce que là, toute votre communication à la cour et tous vos affidavits et tout ça, c'était en anglais jusqu'à date.

M. RANCOURT: Oui.

LE TRIBUNAL: Alors, est-ce que vous proposez, lors de vos interrogatoires, de communiquer en anglais ou en français?

M. RANCOURT: Je propose, et j'ai déjà expliqué en lettre à mes collègues, je propose d'interroger leurs témoins anglophones, qui veulent témoigner en anglais, je propose de les interroger en anglais.

LE TRIBUNAL: Donc....

M. RANCOURT: Et....

LE TRIBUNAL: Parce qu'on a parlé d'un problème de transcription bilingue. Je ne sais pas s'il y aura même un problème.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est quoi l'ampleur du problème? Si votre - on va vous interroger en anglais ou en français? Est-ce que vous insistez qu'ils emmènent un interprète pour vous interroger?

M. RANCOURT: J'accepte de recevoir les questions en anglais; je vais répondre en français.

LE TRIBUNAL: Okay.

MR. DOODY: I'm sorry, what was that? I missed that.

MR. DEARDEN: We may not have gotten that right.

THE COURT: He's - you can....

MR. DOODY: Oh, when he's being cross....

THE COURT: You can question him in English; he will answer in French.

MR. DOODY: Okay.

MR. DEARDEN: But when - Mr. Rancourt, when you are asking....

THE COURT: Examining the others.

MR. DEARDEN: You're examining, you're back and forth when you're examining, it's all going to be in English, as I understand it.

M. RANCOURT: Si....

THE COURT: The examining of your witnesses will be in English if they want to be examined in English.

M. RANCOURT: Exactement. Si M. Giroux veut être examiné en français, je serai heureux de l'examiner en français, mais j'aimerais le savoir le plus tôt possible, si c'était possible.

LE TRIBUNAL: Parce qu'il faut - il va falloir - si je comprends bien, la personne qui - si vous voulez communiquer en français, c'est à Me Doody et à Me Dearden d'embaucher un interprète à ce moment-là. Right?

MR. DOODY: Well, I believe - no, Your Honour. The translator or the interpreter, rather, is paid by the Attorney General's Ministry, thankfully. In an action in which the requisition has been filed, the Attorney General's Ministry supplies the translation.

Mr. Dearden's motion is with respect to the transcript, which is whether the transcript shows....

THE COURT: I'm just trying to find out if there's a big problem with the transcript.

MR. DOODY: There's no problem with the cost of the translation.

THE COURT: Okay, but the only issue is - how big is the problem?

MR. DEARDEN: I don't think - I didn't think there was a big problem, Your Honour. And just for your information, by the way, on the March 28th proceeding, I asked for an Order from Justice Smith that the transcript of those proceedings include the translation or interpretation in it, and he granted it in, you know, the snap of the fingers. Even though Mr. Rancourt objected, he granted the Order that that transcript can contain the interpretation. And there's no issue, Your Honour, that if there's a dispute....

THE COURT: Only the answer in the language it's given is the evidence.

MR. DEARDEN: Is the evidence, right, but....

M. RANCOURT: Mais je....

MR. DEARDEN: Excuse me. Excuse me, I'm not finished.

M. RANCOURT: Je vois pas à ce qu'on....

LE TRIBUNAL: Attendez un instant.

MR. DEARDEN: But why I'm asking for this Order, and I have my draft at Tab 5 of the March 28th letter - and we're extremely close Mr. Rancourt

5 and I on his draft at Tab 6 - is when the time comes either in arguing the motion or at the trial, I want to have - I need this Order to read right from the transcript interpretation that is in it. And if there's a dispute about what that interpretation - whether the interpretation is accurate, of course the judge goes to the language that that particular witness or counsel or staff person spoke. So there should be no issue on this, but I need the Order to have that translation or interpretation in every transcript, and I thought we were close in our two Orders and....

10
15 **LE TRIBUNAL:** Mais je voulais tout simplement savoir, I just want to know the extent of the issue. So, si je comprends bien, vous êtes prêt s'ils veulent examiner M. Giroux, Me Delorme, Me Feldthusen, Me St. Lewis et M. Rock en anglais, la réponse sera en anglais. Lorsqu'il sera le tour de vous interroger, Me Doody et Me Dearden vous posera les questions en anglais, vous allez répondre en français.

20
25 **M. RANCOURT:** Oui.

LE TRIBUNAL: Donc, si pour que la traduction soit inclus dans la transcription ça prend une ordonnance de la cour, et je crois que - est-ce qu'il y a une entente, donc, sur cette question-là? Parce qu'on sait que la preuve c'est, si vous allez donner votre réponse en français, c'est ça la preuve. C'est pas la traduction.

30 **M. RANCOURT:** Oui. Alors, si c'était possible,

moi ce que j'ai - M. Dearden s'est senti obligé de faire une motion formelle sur cette question-là et, donc, je me suis senti obligé de répondre formellement avec....

MR. DEARDEN: I have made the motion.

M. RANCOURT: Avec une - avec une réponse, une motion de réponse.

LE TRIBUNAL: Oui.

M. RANCOURT: Et dans cette motion de réponse, j'ai inclus simplement cinq onglets. Et moi ce que je demande c'est que vous, M. le Juge, vous donniez une direction parce que j'ai des inquiétudes et j'ai exprimé ces inquiétudes-là dans des - dans des lettres et j'aimerais simplement que vous regardiez avec votre oeil à savoir s'il y a un problème.

Alors, à l'onglet numéro 3, par exemple, j'avais exprimé au paragraphe (b) certaines de mes inquiétudes parce qu'il faut comprendre que la règle, telle qu'elle existe actuellement, prévoit que ce que demande M. Dearden n'est pas normalement le cas et qu'il faut obtenir un ordre pour que ça devienne le cas. Et donc les règles - je me suis demandé quels pouvaient être les effets négatifs contre moi. Alors, j'ai posé les questions suivantes. J'ai demandé que:

That the Order stipulates that the translation from French to English is present in the transcript for the reason of convenience only, that the original French words alone have legal standing, not the translation.

LE TRIBUNAL: Mais ça c'est la loi. Ça c'est la loi.

M. RANCOURT: C'est normal. D'accord.

LE TRIBUNAL: C'est la loi.

M. RANCOURT: Oui, d'accord. Et puis:

That in all aspect of litigation, the transcript will be treated exactly the same as if the translation was not included in the transcript.

LE TRIBUNAL: Ça c'est la loi.

M. RANCOURT: Okay. Et puis:

That the Defendant will bear no extra cost associated with translations being included in the transcript.

LE TRIBUNAL: Bien, ça....

M. RANCOURT: Et puis....

LE TRIBUNAL: La seule question, c'est parce qu'il y aurait une traduction, il se peut que ce serait plus de pages, mais, par contre - tout d'abord, les frais ce serait minimum si vous obtenez la deuxième copie. Et si vous gagnez gain de cause, c'est une dépense.

M. RANCOURT: Et la seule autre inquiétude que j'avais c'était que:

That the intended French to English translation not affect the quality or operation of any English to French and French to English interpretations being provided.

C'est-à-dire que moi ce que j'avais - la façon que je l'avais proposé à M. Dearden c'était de faire la chose suivante.

On fait la chose comme c'est prévu dans les règles et après il obtient une traduction de qualité qu'il veut - à partir du français.

LE TRIBUNAL: C'est pas la traduction qui importe, c'est la réponse que vous donnez en français.

M. RANCOURT: Oui.

LE TRIBUNAL: Alors, c'est votre réponse en français qui est la preuve.

M. RANCOURT: Oui. Et donc vous - merci de me rassurer.

LE TRIBUNAL: C'est - la traduction, c'est uniquement pour les fins de Me Dearden et de Me Doody au lieu - il faut le savoir là. Il faut penser pour un instant, M. Rancourt, vous mettre un peu dans la place de la partie adverse. Parce que s'il faut que, par la suite, ils embauchent un interprète pour faire un cahier de traduction parce que vous avez refusé d'accepter que l'interprétation soit interprétée par l'interprète qui est fourni par le Ministère, ils vont demander - s'ils gagnent gain de cause dans la motion, ils vont dire, "Voilà, c'est une dépense additionnelle que M. Rancourt nous a causée, c'était un refus déraisonnable. Donc, on demande des frais à une échelle plus élevée."

À mon avis, on perd absolument rien d'avoir une transcription bilingue parce que, effectivement, la réponse - la preuve c'est dans la langue de la personne qui a donné la preuve. La traduction n'a aucun appui légal dans toute la question. La preuve c'est votre réponse que vous donnez en français. Ça ajoute très peu comme frais parce que, si la transcription - je ne sais pas, les interrogatoires, si ça va être long ou non. On parle uniquement de la question de - pour la champartie. Même pour les

interrogatoires, j'imagine que pour les interrogatoires au paragraphe 5 - au préalable - Mme St. Lewis, vous allez la questionner en anglais.

M. RANCOURT: Oui. Alors....

LE TRIBUNAL: Et c'est seulement - vous êtes les seules deux parties. Donc, c'est uniquement pour votre - j'imagine.

M. RANCOURT: Alors, merci beaucoup pour ces explications. Comme vous pouvez voir....

MR. DEARDEN: Your Honour, if I....

M. RANCOURT: Excusez-moi, je suis en train de parler. Comme vous pouvez voir dans la motion que M. Dearden a mis de l'avant, son onglet 3 et 4, ce sont nos deux propositions pour l'ordre en question et, effectivement, M. Dearden a signalé que nos positions sont très très proches. J'ai....

LE TRIBUNAL: Celui à l'onglet 4?

M. RANCOURT: L'onglet 4, c'est la mienne, et l'onglet 3 c'est celle de M. Dearden. Et à l'onglet 4, par exemple, je demande que ça soit dit d'une certaine façon. M. Dearden préfère un texte à l'onglet 3 où il dit la chose suivante. Il dit....

MR. DEARDEN: I don't think you're looking at the right one. I'm at....

M. RANCOURT: Ah, l'onglet....

MR. DEARDEN: The draft Orders in the March 28th letter? Is that what you're at?

M. RANCOURT: Je suis dans votre *Motion Record*.

MR. DEARDEN: You're in the record.

M. RANCOURT: Et, donc, je regarde à son onglet 3. Il propose un paragraphe qui est comme suit:

This Court orders that the language spoken by a witness, counsel and the defendant during the out-of-court examination of the libel action is the official version of the statements made during the examinations.

Alors, si je pouvais me permettre de vous poser la question: Qu'est-ce que ça veut dire "the official version"? C'était pas clair pour moi. Pour moi ça n'a....

LE TRIBUNAL: C'est la loi, effectivement.

M. RANCOURT: Alors, est-ce que ça devrait pas être dit autrement que "official version"? "The version with legal standing" ou quelque chose comme ça?

LE TRIBUNAL: Je ne connais pas d'autres mots. Pour moi, c'est clair, "official version". C'est ça la version...

M. RANCOURT: Okay.

LE TRIBUNAL: ...qu'on peut utiliser. C'est la seule version qui peut être utilisée. Donc, si on me donne une transcription où le témoin donne une réponse en français, moi je regarde uniquement la réponse en français.

M. RANCOURT: Très bien. Alors....

LE TRIBUNAL: C'est ça la preuve.

M. RANCOURT: Dans ce cas-là, j'ai aucune objection. Je demandais simplement vos....

LE TRIBUNAL: Lorsque j'entends un témoin oral, c'est la preuve que la personne dit oralement et non pas la traduction. Ça m'arrive souvent à

procéder à un procès bilingue. C'est la réponse du témoin. Alors, is there much difference between the two Orders?

MR. DEARDEN: He has "for convenience", but otherwise there wasn't, I thought, until last week when Mr. Rancourt informed us during proceedings before Justice Smith that he changed his mind.

M. RANCOURT: Non, c'est pas vrai.

MR. DEARDEN: And he wouldn't....

THE COURT: Do you care which one is signed?

MR. DEARDEN: Pardon?

THE COURT: Do you care which one is signed?

MR. DEARDEN: I want - that's the one - I do, the one that has "official version" as opposed to "for convenience", whatever that means.

THE COURT: I don't know what that means "for convenience".

MR. DEARDEN: Right. So I would prefer the one that we're proposing, Your Honour, which, as I understand it now, Mr. Rancourt doesn't object to.

LE TRIBUNAL: La version officielle, c'est - ça veut dire la même chose. Vous ajoutez des choses avec - des expressions qui ne sont pas nécessaires.

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay. Alors, je vais signer la version de Me Dearden parce que, effectivement, d'après moi, ça vous donne plus - ça vous donne davantage.

M. RANCOURT: D'accord.

LE TRIBUNAL: C'est la transcription officielle. Il y a pas de mot pour dire "certifié", il y a pas d'autres mots. Alors....

5 **M. RANCOURT:** M. le Juge, j'apprécie beaucoup vos explications et c'était - moi je voulais - moi j'ai compris que les conférences sur le cas, comme ceci, c'était informel. Moi je ne voyais pas la nécessité de faire des motions comme ça, et je pense qu'on aurait pu le résoudre en discussion, comme on vient de le faire.

10 **LE TRIBUNAL:** Mais - effectivement. Alors, on a l'échéancier. Je vais revoir. Donc, l'échéancier prévu pour les interrogatoires au préalable au paragraphe 5 reste toujours en place, c'est-à-dire les dates prévues au

15 paragraphe 5 restent en place.

MR. DEARDEN: Now, Your Honour, I do have a motion that I - a written request that I wanted you to deal with in writing which dealt with Mr. Rancourt serving a supplementary affidavit of documents on - he swore it on March the 6th, but he stopped it on September 21, 2011.

20

THE COURT: Okay. Well, let's - before we go to that.

25 **MR. DEARDEN:** Well, I'm only saying that, Your Honour - sorry - because you said paragraph 5 stands, but actually I've asked for a variation of 5 c). So I didn't want that to be....

THE COURT: Okay.

30 **MR. DEARDEN:** Okay.

LE TRIBUNAL: Pour revenir, la motion de champartie, parce que ça c'était le plus

difficile. Donc, on prévoit le 18 avril, M. Giroux, le témoin sera interrogé à 10h00; Me Rock, 18 avril à 2h00; Joanne St. Lewis à 10h00 le 23 avril; Bruce Feldthusen à 2h00 le 23 avril; Me Delorme le 24 avril à 10h00; M. Rancourt le 24 avril à 2h00.

M. Rancourt devrait fournir un affidavit supplémentaire qui répondra au témoignage de M. Giroux le 23 avril, le matin, c'est-à-dire avant 10h00. Ça va pour le matin le 23 avril?
M. RANCOURT: Oui, quand que nous allons arriver pour les examinations, oui.

LE TRIBUNAL: À 10h00. On s'était entendu - j'ai signé l'ordonnance qui permet la traduction de la transcription. On sait maintenant qu'il s'agit uniquement de votre témoignage, M. Rancourt. Il y avait deux choses, à mon avis, dont on devrait traiter.

M. RANCOURT: Excusez-moi. Par rapport à la dernière chose que vous avez dite, vous avez dit on sait maintenant qu'il s'agira que de mon témoignage mais, en fait, on ne sait pas encore si M. Giroux va....

LE TRIBUNAL: Oui, c'est vrai.

M. RANCOURT: Va témoigner en français ou en anglais.

LE TRIBUNAL: C'est possible, c'est vrai.

M. RANCOURT: Est-ce que ça serait possible d'avoir un estimé pour une date quand je pourrai le savoir si M. Giroux va être examiné en français ou en anglais? Comme ça je pourrai préparer mes questions en conséquence,

et cetera.

LE TRIBUNAL: Ça vous prend de la préparation?

M. RANCOURT: Ben, j'écris mes questions.

LE TRIBUNAL: Mais vous êtes bilingue.

M. RANCOURT: Oui. Non, mais ça serait bien de le savoir d'avance.

LE TRIBUNAL: C'est la même question.

M. RANCOURT: Est-ce que - par exemple, est-ce que c'est moi qui aura la responsabilité de m'assurer que l'interprète soit sur place?

LE TRIBUNAL: Bien, ce sera Me Doody, s'il se présente avec un témoin qui a l'intention de communiquer en français puis il y a pas de témoin - il y a pas d'interprète s'il a pas fait les arrangements nécessaires.

M. RANCOURT: D'accord. Si M. Doody accepte de faire les arrangements, j'accepte de l'apprendre assez tard.

LE TRIBUNAL: Oui, c'est vrai.

M. RANCOURT: D'accord.

LE TRIBUNAL: On est bilingue.

M. RANCOURT: D'accord. Est-ce que M. Doody accepte ça?

THE COURT: If Mr. Giroux is going to speak in French, you'll have to arrange for an interpreter.

MR. DOODY: I will advise Mr. Rancourt, and although ordinarily the lawyer, the party conducting the questioning makes all the arrangements, I will undertake to obtain a translator for Mr. Giroux if he chooses to translate [sic] in the French language.

THE COURT: If he wants to speak in French, yes.

MR. DOODY: But I understand Mr. Rancourt has to arrange the examination arrangements for his - for the cross-examinations and examinations he intends to conduct. So he's going to have to tell me where and when, particularly where, we know when, where this examination is going to take place because that's his....

THE COURT: Where are we going to do that?

M. RANCOURT: Oui, j'accepte ces....

MR. DOODY: It's his cost and his arrangement.

LE TRIBUNAL: Alors, les interrogatoires auront lieu où? Le 18, le 23....

M. RANCOURT: Ils vont avoir lieu chez Gillespie Reporting Services.

LE TRIBUNAL: Gillespie?

M. RANCOURT: Oui.

LE TRIBUNAL: À chaque - Gillespie.

M. RANCOURT: Oui.

LE TRIBUNAL: Pour tous les interrogatoires.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça s'applique aux paragraphes 4 et 5?

M. RANCOURT: Oui.

THE COURT: For all discoveries and cross-examinations, Gillespie's. All right.

MR. DEARDEN: Your Honour, could I just make or request two clarifications? One, which has nothing to do with you, we're getting a translation from my good friend here that's referring to discoveries, and it's really cross-examinations, because that became in issue

before, so - but it will be apparent to me who....

THE COURT: Yes.

MR. DEARDEN: When you - there has been some points where you actually talked of discovery.

THE COURT: It's cross-examinations are taking place - well, examination of the witness is M. Giroux on the 18th; cross-examinations of Mr. Rock on the 18th at 2:00; cross-examination of Joanne St. Lewis at - the 23rd at 10:00; cross-examination of Bruce Feldthusen on the 23rd at 2:00; cross-examination of Me Delorme on the 24th at 10:00; and cross-examination of Mr. Rancourt at 2:00.

MR. DEARDEN: And the second point of clarification, please, Your Honour, the s. 11 Order that you just signed, it's gonna cover all out-of-court examinations that might have interpretation or translation.

THE COURT: All out-of-court examinations.

MR. DEARDEN: Thanks.

LE TRIBUNAL: On arrive - ça fait déjà une heure et demie et encore quelques questions à trancher. Est-ce que c'est le temps de prendre une pause? Je ne sais pas s'il y en a encore long à faire? Parce que, d'après moi, après les interrogatoires, on avait prévu cette conférence, que nous avons présentement ce matin, le 2 avril, pour revoir où nous en sommes avec les interrogatoires, hein?

M. RANCOURT: M. le Juge, nous avons une conférence le 4 mai, je vous signale, qui était

pour examiner où on en était avec les - ce qu'on appelle en anglais les "discoveries". Donc, on a déjà une date pour le 4 mai.

LE TRIBUNAL: Mais moi mes inquiétudes sont les suivantes, qu'il y aura des problèmes, des possibilités de refus vis-à-vis la portée des questions lors des examens qui auront lieu. Il y a toutefois la question de si vous auriez le droit de déposer un affidavit supplémentaire, pas en réponse à M. Giroux mais en réponse aux preuves, aux témoignages des témoins suite aux interrogatoires. Et, donc, s'il y a lieu, d'avoir un affidavit supplémentaire, et si oui, est-ce qu'il y aura des interrogatoires, des examinations sur ce nouveau affidavit? Alors, il y a ces choses-là qui m'inquiètent un peu. Donc, d'après moi, on devrait se rencontrer non - pas longtemps après les interrogatoires qui auront lieu le 24. Vous avez proposé le 4 mai. Parce qu'à ce moment-là, il y aura toute - les interrogatoires auront tous eu lieu à ce moment-là.

So, the 4th of May we would come back and review the cross-examinations, or the refusals out of that, the examinations for discovery scheduled, anything out of that, whether or not Mr. Rancourt would have a further affidavit before we do the Champerty Motion. So, we need to have, on the 4th of May, sort of a meeting to see where we are. So that seems right, we've got that date.

MR. DOODY: What time is that, Your Honour?

THE COURT: It's at 9:00 a.m.

MR. DOODY: 9:00 a.m.

LE TRIBUNAL: It's in the schedule now.

MR. DOODY: And is it your suggestion, Your Honour, that Mr. Rancourt, if he wishes to file an affidavit in response to the matters raised - and, of course, this is new matters that he could not have anticipated...

THE COURT: Right.

MR. DOODY: ...because he's obliged to have served us with any affidavit in response to what they say in their affidavit before he cross-examines. So this is new matters that he could not have anticipated. Your Honour, is it your intention that Mr. Rancourt serve us with any motion seeking to file such an affidavit so that it could be argued on the 4th, or we're just going to file....

THE COURT: Now, I think on the 4th we're just going to find out what's the status of - because I'm thinking there may be a number of motions and we're going to try to combine them as much as possible so that all the motions can be heard at same time.

MR. DEARDEN: Your Honour, what's your thinking in terms of refusals, that it would be done in writing in chart form or we would orally argue it before you?

THE COURT: Probably orally. I'd love to do it by chart form, but....

MR. DEARDEN: Well, we'll have to file a chart anyway.

5 **THE COURT:** You have to file a chart anyway. I think we'll take a short break and just - because you have an "affidavit of documents" question. Tous les deux, hein, les affidavits de documents. You have an additional....

MR. DOODY: Your Honour, since I'm not involved in that, may I be excused?

10 **THE COURT:** I think so. La seule question qui reste en jeu c'est la demande de Me Dearden à propos de votre affidavit de documents.

M. RANCOURT: Oui.

15 **LE TRIBUNAL:** Okay. On revient dans une quinzaine de minutes pour donner à le personnel une pause, s'il vous plaît.

...Me DOODY QUITTE LA SALLE D'AUDIENCE

L ' A U D I E N C E E S T S U S P E N D U E
À L A R E P R I S E :

20 **LE TRIBUNAL:** Dans la correspondance entre Me Dearden et M. Rancourt, j'avais ordonné, lors de la conférence du 8 février, que M. Rancourt devrait fournir les copies de tous les documents, alors, de son affidavit de documents avant le 9 mars, et qu'il devrait fournir un affidavit de documents supplémentaire ainsi que les copies le 16 avril. Donc, ça c'est une date à venir.

30 Il paraît, si je comprends bien la correspondance de Me Dearden, que vous avez enlevé des documents d'après votre affidavit de documents - je ne connais pas trop la - si j'ai

bien résumé la question. Donc, Me Dearden, c'est quoi le problème encore là?

MR. DEARDEN: Your Honour, do you have my March 21st letter that should have four tabs? I can give you a - it's for a variation of paragraph 5 c).

THE COURT: Is that in the March 28th....

MR. DEARDEN: No, 21st.

THE COURT: Okay.

MR. DEARDEN: It's a separate document, March 21st.

THE COURT: Yes.

MR. DEARDEN: You should have four tabs. So, Your Honour, if I could just quickly take you through this. As you just said, paragraph 5 c) of your February 8th endorsement said that the Defendant, by March the 9th, was to provide me copies of all the documents that he had in his September 21st affidavit. And that date came and went, and when I was out of the country, I sent him an e-mail saying, "You haven't produced all the documents, you haven't produced any documents." So he does that on the Monday, he does - and what he does is he produces to me documents he listed in a supplementary affidavit of documents that he swore on March the 6th, and you'll see - and that was with the advice of counsel. He did have a lawyer involved in this matter.

And I've set out the three documents that had been deleted from his supplementary affidavit of documents, one of them - you see

that in paragraph 3.

THE COURT: Right.

MR. DEARDEN: One of them is an e-mail exchange with CCLA lawsuit, and then two of them deal with e-mails with potential expert witnesses. But what's most disconcerting, Your Honour, is that affidavit that Mr. Rancourt swore on March the 6th only lists documents up to September 21st, 2011 rather than listing all the documents that he had in his possession as of the date that he swore that.

And I point out that your paragraph 5 c) says "by" April 16th, not "on" April 16th. And I fail to see what justification there is to hold back six months of documents.

And more disconcerting to me is when we had the case conference on February 8th, at least the part that I was able to hear because you'll recall that I was on conference call, there was - none of us were told by Mr. Rancourt that he was going to remove documents. He didn't seek a variance of your Order or seek leave to amend his affidavit because it was inadvertence and listing documents that shouldn't have been there. He didn't do any of that. He just swears a new supplementary affidavit of documents and holds back documents that are post September the 21st. And we didn't know any of that.

But your Order was "by" April the 16th he's to produce all this, so I then decided to write this letter and request that this be dealt with

in writing as opposed to today, that he be required to serve by March 26th the copies of the documents that he's listed in Schedule A of his March 6th affidavit.

5 I'm going to deal, during discovery, with the three that he's deleted, so I'm not going to tie up the Court with, you know, disputing the three that he's deleted. I'm gonna deal with him on that in examination for discovery.

10 But my concern, Your Honour, is twofold. One - well, first of all, again, there's no valid justification for him not to have produced all the copies that he had in his possession as of March 6th, that he's listed. So he only lists up to September 21st. That, to me, is just totally unfair and it isn't an expeditious way to conduct examinations.

15 He's had Joanne St. Lewis' affidavit of documents since January, the copies. He's had them since January. I'm concerned that I'm gonna get hit with voluminous documentation from Mr. Rancourt two weeks before his discovery, and it's not just me that has to prepare, Your Honour, like, Joanne St. Lewis has to know - has to read whatever he produces, that he still thinks that he can wait until April the 16th to do, and I just think that's totally unjust, unfair, and there's no valid justification.

20 He's had Joanne St. Lewis' affidavit of documents since January, the copies. He's had them since January. I'm concerned that I'm gonna get hit with voluminous documentation from Mr. Rancourt two weeks before his discovery, and it's not just me that has to prepare, Your Honour, like, Joanne St. Lewis has to know - has to read whatever he produces, that he still thinks that he can wait until April the 16th to do, and I just think that's totally unjust, unfair, and there's no valid justification.

25 So, I would request that Your Honour amend your Order and ask that he produce me copies of these - what he has by April 5th, by this Thursday, so that I can look at them over the

30

Easter weekend and start getting ready for his examination for discovery.

M. RANCOURT: Alors, donc juste pour clarifier la situation.

LE TRIBUNAL: Vous pouvez vous asseoir si vous voulez, M. Rancourt.

M. RANCOURT: Est-ce que ça dérange si je suis debout?

LE TRIBUNAL: Ça m'est égal.

M. RANCOURT: Okay. Donc, juste pour clarifier la situation, j'ai effectivement soumis un *supplementary affidavit of documents* parce que j'ai réalisé que je pense trois des documents qui étaient dans mon cédule A étaient, en fait, privilégiés sous - ce qu'on appelle "litigation privilege". Et, donc, je les ai transférés de cédule A à cédule B, et j'ai fait cette correction-là, et mon affidavit, le nouveau, vous pouvez le voir à l'onglet 4 du document de M. Dearden qu'il vous a signalé. À l'onglet 4, je crois. Ça c'est la lettre de M. Dearden. On parle d'une lettre qui est datée du 21 mars, n'est-ce pas?

LE TRIBUNAL: Du 21, okay. Et si je comprends bien, Me Dearden est prêt à traiter de cette question-là lors de vos interrogatoires.

M. RANCOURT: Oui. Alors, j'aimerais juste...

LE TRIBUNAL: Pourquoi vous avez transféré les documents.

M. RANCOURT: ...prendre quelques instants pour expliquer la situation telle que moi je la vois parce qu'elle est - c'est un peu différent de ce

qui a été présenté à date.

Et donc, je - c'est possible, mais je pense que vous êtes pas à l'onglet 4, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Ah, d'accord. Et, donc, à la première page de l'onglet 4, il y a les paragraphes de mon affidavit. À la première page de l'onglet 4, à la toute première page, dans l'affidavit j'explique que j'ai changé cet affidavit pour faire cette correction-là parce que je m'en suis aperçu de cette erreur. Et ça je le fais, M. le Juge, en suivant la règle 30.07. La règle 30.07 permet qu'on puisse corriger un affidavit quand on trouve une erreur, et donc j'ai suivi cette règle-là.

M. Dearden a raison que j'ai ajouté que les documents qui allaient à la même date que le premier affidavit, c'est peut-être une erreur de ma part, c'est une irrégularité, je dirais, parce que je savais que, de toute façon, j'allais donner un affidavit plus complet le 16 avril. Et donc j'ai expliqué ça dans l'affidavit que vous voyez devant vous, j'ai expliqué que c'était - que cet affidavit n'allait aller uniquement qu'à la date originale de l'affidavit et qu'on prévoyait, il était prévu à partir de notre conférence sur la cause, que j'allais, de toute façon, donner un affidavit supplémentaire le 16 avril. Donc, j'ai expliqué ça dans mon affidavit. J'ai été très transparent. Et la raison que j'ai corrigé l'affidavit c'est parce qu'il y a des documents

que j'ai mis en *strikeout* qui, d'après moi, tomberaient sous le privilège et qui ne devraient pas être donnés à M. Dearden.

Et donc je tiens à ça. C'est une erreur de ma part par manque de connaissance légale, et donc je fais cette correction-là, et donc je refuse de donner ces documents que j'ai enlevés de cédule A et que j'ai ajoutés au cédule B. Et j'espère - voilà.

Donc, ça c'est ma position. C'est pour ça que j'ai soumis ce nouvel affidavit.

Par rapport aux inquiétudes de M. Dearden, il s'inquiète qu'il va recevoir beaucoup de documents le 16 avril. C'est pas le cas, il y en a pas beaucoup. Je me souviens pas du nombre. J'ai commencé à faire la recherche, mais c'est pas des piles de documents, c'est relativement peu de documents.

LE TRIBUNAL: Combien c'est "peu"?

M. RANCOURT: Ben, j'estimerai - j'ai pas complété la recherche....

LE TRIBUNAL: Vous aviez beaucoup de documents avec vous. Je ne sais pas si c'est les documents qui se rapportent....

M. RANCOURT: Non, ça c'est des documents de préparation, des décisions légales, des choses comme ça. Mais des - j'ai commencé à faire la recherche et j'estimerai en ce moment qu'il y aura peut-être - j'estime, là, et c'est très grossier parce que j'ai juste commencé, mais une dizaine de documents, j'estime. Ça peut être cinq, ça peut être 20, là, mais c'est de cet

ordre-là. Donc, c'est pas énorme comme nombre de documents et ça me - je continue à faire la recherche.

5 Et je tiens aussi à signaler, M. le Juge, qu'on est très pointu sur mon affidavit de documents, mais il y a des erreurs qui brisent les règles qui sont dans l'affidavit de Mme St. Lewis et aussi il y a des documents clairement qui ne sont pas présents et auxquels je n'ai pas accès. C'est faux ce que peut suggérer M. Dearden sur cette question-là.

10 Donc, il y a, de toute évidence, des erreurs évidentes dans l'affidavit de l'opposant et pas d'erreur dans le mien, sauf celle que je viens de corriger dans ce nouvel affidavit. J'ai reconnu l'erreur et je l'ai corrigée. Et donc il y a....

15 **LE TRIBUNAL:** La question à savoir, M. Rancourt,...

20 **M. RANCOURT:** Oui.

LE TRIBUNAL: ...si vous pouvez le corriger de la façon que vous l'avez fait.

M. RANCOURT: J'ai peut-être fait une erreur de ce côté-là, je reconnais que j'ai....

25 **LE TRIBUNAL:** Parce qu'une fois qu'on a divulgué un document qui est privilégié, à ce moment-là....

M. RANCOURT: Non, mais j'ai pas divulgué le document, M. le Juge. J'ai uniquement divulgué sur son existence, pas le document.

30 **LE TRIBUNAL:** Non, non, mais lorsque vous vous n'avez pas insisté sur le privilège au départ,

pourquoi changer d'avis, parce que - mais c'est question de procédure. Me Dearden n'insiste pas pour l'instant.

M. RANCOURT: D'accord.

LE TRIBUNAL: La seule chose à trancher c'est que - si je comprends bien, c'est parce que le nouveau affidavit supplémentaire que vous avez fourni à M. Dearden le 9 mars ou le 10 mars, qui est intitulé "Supplementary Affidavit of Documents", qui devrait être peut-être plutôt "modifié" plutôt que "supplementary", il est assermenté uniquement - et vous avez produit les documents uniquement au 21 septembre et, en principe, lorsqu'on fournit un affidavit de documents supplémentaire, on donne les additions, on l'amène à date jusqu'au 9. On ne corrige pas. On dit effectivement il y a quelque chose de supplémentaire à divulguer à ce moment-là. Donc, c'est une mise-à-jour, et ça ne l'était pas.

Alors, l'inquiétude, comme vous l'avez compris, de la part de Me Dearden, c'est que rendu au 16 avril, s'il y a des volumes de nouveaux documents, il voudrait rapprocher la date parce qu'il voulait bien préparer sa cliente avant de préparer aux interrogatoires, mais là vous dites que ce sera pas plus que 20 documents?

M. RANCOURT: Environ 10.

LE TRIBUNAL: Environ 10. C'est tout ce que vous avez.

M. RANCOURT: Oui, je crois, mais j'ai pas

complété la recherche encore. Mais je peux vous signaler, M. le Juge, que M. Dearden sait depuis le 8 février que ma date pour soumettre les nouveaux documents, ça va être le 16 avril. Il ne s'est pas plaint de ça avant aujourd'hui. Alors, j'ai du mal à comprendre pourquoi il aurait besoin que ça soit si urgent maintenant. La date du 16 avril, on la connaît depuis longtemps. Alors, je ne comprends pas pourquoi il faut faire ça. Et je m'excuse de mon erreur de procédure par rapport à l'affidavit, mais je l'avais clairement indiqué dans l'affidavit comme tel ce que j'étais en train de faire.

Merci beaucoup.

THE COURT: Okay. So he says the 16th should be fine, there's only going to be 10 documents, new documents.

MR. DEARDEN: Your Honour, my response on that is - first of all, I did immediately complain to him when I found out that he stopped at September 21st, and that's why I wrote you to vary paragraph 5 c). And if he knows what the 10 documents are, he should be producing them this week. Why hold back to April 16th?

THE COURT: He says he hasn't quite finished. 16th, we're going to leave that date. Is that it?

M. RANCOURT: Oui, moi j'ai plus rien.

MR. DEARDEN: I had one other issue on the list, Your Honour, on the March 28th letter to you, which was fixing a trial date, which perhaps we can revisit this on May the 4th.

THE COURT: We'll revisit it maybe on May 4th, whatever. Okay?

MR. DEARDEN: Okay.

THE COURT: All right.

MR. DEARDEN: Thank you, Your Honour.

THE COURT: I will try to get an endorsement, l'inscription au plus tard au courant de la journée ou demain au plus tard. Donc, pour répéter ce qui est en jeu, surtout c'était les interrogatoires, *cross-examinations*. Il faut préciser. En français, on dit quoi?

L'INTERPRÈTE: Interrogatoires au préalable.

LE TRIBUNAL: Mais est-ce qu'on fait la distinction entre *discovery*, *cross-examination*? Non?

L'INTERPRÈTE: Contre-interrogatoire lors de l'interrogatoire au préalable.

LE TRIBUNAL: Okay, interrogatoires [sic] lors des interrogatoires au préalable.

M. RANCOURT: Moi, si j'ai bien compris, interrogatoires au préalable, ça veut dire....

LE TRIBUNAL: Non, que les interrogatoires au préalable de M. Giroux auront lieu le 18 avril à 10h00; de M. Rock, le 18 avril à 2h00; de Joanne St. Lewis, le 23 avril à 10h00; de Bruce Feldthusen, le 23 avril à 2h00; 24 avril, de Me Delorme, à 10h00; et à 2h00, Me Rancourt. Si - les interrogatoires auront lieu chez Gillepsie, ça ça s'applique à tous les interrogatoires. Si vous avez à fournir un affidavit supplémentaire qui répond au témoignage de M. Giroux, vous allez déposer cet

5 affidavit-là avant le - au plus tard le 23 avril à 10h00, c'est-à-dire, avant de commencer les interrogatoires de Joanne St. Lewis, en arrivant. Je vais signer l'ordonnance qui se trouve à l'onglet 3, ou la version à l'onglet 3 de Me Dearden. Oui, à l'onglet 3.

MR. DEARDEN: Yes.

10 **LE TRIBUNAL:** Et Me Doody va vous indiquer avant les interrogatoires de M. Giroux s'il va utiliser le français, s'il va témoigner en français, et si c'est le cas, c'est Me Doody qui s'occupera de s'assurer que l'interprète est présent.

15 **M. RANCOURT:** Oui, et Me Doody a signalé qu'il demande que je lui dise la place précise, et donc je vais faire ça le plus tôt possible. La place précise de l'interrogatoire. Il demande....

20 **LE TRIBUNAL:** C'est Gillespie...

M. RANCOURT: Oui, mais....

LE TRIBUNAL: ...pour tous les interrogatoires.

M. RANCOURT: Oui, um-hmm.

25 **LE TRIBUNAL:** L'autre chose, je vais signaler ce qui reste encore. Donc, il y a tous les interrogatoires qui sont prévus au paragraphe 5, c'est-à-dire le 30 avril et le 1er mai. 5 c), ça reste en jeu. La conférence relative à la cause aura toujours lieu le 4 mai, donc, ça va être - ça ça traite non seulement de la requête, mais - de la motion en champartie, ça prend la place de la conférence relative à la cause au
30 paragraphe 4 g). Et vous devrez toujours

répondre aux représentations au sujet des frais de la conférence relative à la cause d'ici le 23 avril. Ça c'est pour la comparution devant le protonotaire MacLeod. N'oubliez pas cette date-là.

M. RANCOURT: M. le Juge, si je pourrais faire une petite demande additionnelle. Est-ce que ça serait possible par rapport à ces soumissions, étant donné tout ce qu'on vient de mettre dans ce bloc de deux semaines là de les rapporter à la semaine du 20 mai?

LE TRIBUNAL: C'est trop tard ça, 20 mai.

M. RANCOURT: Pour les soumissions, parce que ça presse pas.

LE TRIBUNAL: Le 30 avril, si vous voulez.

M. RANCOURT: D'accord, le 30 avril ça m'aiderait beaucoup, oui.

LE TRIBUNAL: Le 30 avril.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay, d'accord. Parce que quand on arrivera sur - le 4 mai, on le saura, oui ou non. Okay. Thank you. Merci tout le monde.

M. RANCOURT: Donc, les soumissions sur les coûts, il y en a deux. Ils sont dus le 30 avril, c'est ça?

LE TRIBUNAL: Les seuls qui sont - le 30 avril?

M. RANCOURT: C'est-à-dire les deux étaient dus le 23 puis on a bougé ça au 30, si j'ai bien compris.

LE TRIBUNAL: Celui des frais...

M. RANCOURT: Oui, les frais.

LE TRIBUNAL: ...qui était prévu au 23, c'est

remis au 30.

M. RANCOURT: Exact. Merci.

LE TRIBUNAL: Est-ce qu'il y en a d'autres qui sont dus le....

M. RANCOURT: Non.

LE TRIBUNAL: Non. Okay. Vous parlez de deux - ça va.

MR. DEARDEN: Yeah, he did, Your Honour. Am I missing something? So all you're - April 30th, "costs thrown away" submissions....

THE COURT: Have been moved to the 30th from the 23rd. That's the only change to that timetable.

MR. DEARDEN: Which is paragraph 6.

THE COURT: Yes.

MR. DEARDEN: Okay.

THE COURT: I think he's mistaken. I don't know. Unless there's a timetable on - je sais pas. Est-ce qu'il y a....

M. RANCOURT: Non, j'ai mal prononcé. C'est parce que je voulais dire qu'il y avait deux soumissions, pas le paragraphe 2.

LE TRIBUNAL: Il y a deux soumissions?

M. RANCOURT: Ben, c'est-à-dire qu'il y en a deux puis ils sont dus le même jour.

LE TRIBUNAL: Lesquels?

M. RANCOURT: Il y a deux soumissions pour des coûts.

LE TRIBUNAL: Lequel est l'autre?

M. RANCOURT: Je me souviens plus exactement, là, mais il y en avait deux.

LE TRIBUNAL: C'est pas dans cet échéancier.

M. RANCOURT: Il y en avait deux, oui. M.

Dearden, est-ce qu'il y en avait deux?

THE COURT: I think it was just the one.

MR. DEARDEN: Defendant's request for translation of all documents. Yes, there is two. There was firstly the costs thrown away during the proceeding before Master MacLeod, and then Mr. Rancourt wrote us....

THE COURT: Oh yes. Bien, c'est le même, c'est la même chose, oui.

M. RANCOURT: Ben, c'est deux demandes...

MR. DEARDEN: No, it isn't.

M. RANCOURT: ...séparées, M. le Juge.

LE TRIBUNAL: Oui, c'est vrai.

M. RANCOURT: Oui.

LE TRIBUNAL: Vous avez raison. C'est le même paragraphe.

M. RANCOURT: Oui, c'est le même paragraphe, oui.

MR. DEARDEN: Same paragraph, yes.

LE TRIBUNAL: Okay. Moi je cherchais un autre paragraphe. C'est ça qui m'embêtait un peu. Okay, merci.

MR. DEARDEN: Thank you, Your Honour.

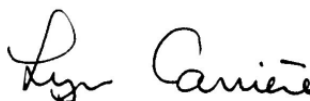
73.
Certification

CERTIFICAT DE TRANSCRIPTION
Loi sur la preuve, paragraphe 5(2)

5 Je, soussignée, **Lynn Carrière**, certifie que le présent document
est une transcription exacte et fidèle de l'enregistrement de
l'affaire Joanne St. Lewis c. Denis Rancourt portée devant la
Cour supérieure de Justice au 161, rue Elgin, Ottawa (Ontario),
10 tirée de l'enregistrement digital n° 0411-57-20120402, qui a
été certifiée dans la formule 1.

Le 21 mai 2012

Date



Lynn Carrière

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

V.

DENIS RANCOURT

P R O C E E D I N G S

HEARD BEFORE THE HONOURABLE MR. JUSTICE BEAUDOIN
on Friday, May 4, 2012 at OTTAWA, Ontario

APPEARANCES:

Dearden, Mr.

Doody, Mr.

D. Rancourt, Mr.

Counsel for Ms. St. Lewis

Counsel for the University of Ottawa

Self Represented

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Transcript Ordered:	May 10, 2012
Transcript Completed:	July 10, 2012
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1.
St. Lewis v. Rancourt

FRIDAY, MAY 4, 2012

5 LE TRIBUNAL: Voilà l'interprète dans la boîte des
témoins. Je m'excuse - malheureusement - un procès
- elle n'avait pas averti le personnel de soutien
que ça commençait à 9h00. Donc les gens se sont
10 hâtés pour se présenter le plus tôt possible, alors
c'est pour ça le retard. Par contre, je dois vous
avertir que comme vous - peut-être le constater, je
suis en plein milieu d'un procès criminel avec un
témoin qu'on a eu du mal à chercher pendant
plusieurs jours qui est finalement - il est là
15 aujourd'hui pour témoigner, donc - pour prendre le
moins de temps que possible aujourd'hui - j'ai reçu
tout simplement - depuis la conférence qu'on a eu le
2 avril, je vais souligner que j'ai reçu tout
d'abord les représentations écrites de monsieur
20 Rancourt à propos des frais en date du 30 avril.
J'ai reçu ensuite l'affidavit supplémentaire de
monsieur Rancourt tel que prévu dans l'échéancier -
dans l'ordonnance qu'on a fait le 2 avril, c'est-à-
dire numéro sept qui prévoyait que si monsieur
25 Rancourt avait un affidavit supplémentaire qu'il
devrait le faire d'ici le 23 avril. Et en plus j'ai
reçu de la part de monsieur Dearden un cahier de
réponse à la lecture des plaintes. Donc il s'agit
de toutes les affaires - yes.

30 MR. DEARDEN: Your Honour, do you have two replies
from me; one for the document translation and one
for the proceedings before Master McLeod, the one

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that's on document translation is not spiral-bound, it's only a couple of pages.

THE COURT: I don't believe - yes, okay.

MR. DEARDEN: Yes.

THE COURT: It's inside.

MR. DEARDEN: Okay, thanks.

THE COURT: It looked like an affidavit of service, I didn't note it, all right, there it is, okay, yes, I have it. Donc, aujourd'hui ce qu'on comptait faire c'est voir est-ce qu'effectivement qu'on a pu avoir les interrogatoires tels que prévu, c'est-à-dire le 18, le 23, le 24 avril et les interrogatoires ont eu lieu tels que prévu?

M. RANCOURT: Presque - presque, Monsieur le Juge, tous les interrogatoires ont eu lieu de mon côté, mais l'autre partie ne m'a pas interrogé le 24 avril, l'après-midi.

LE TRIBUNAL: Okay. Est-ce qu'ils ont choisi de ne pas vous interroger?

M. RANCOURT: C'est ce que j'ai compris. On me l'a annoncé le jour-même et j'ai compris qu'on allait pas m'interroger.

LE TRIBUNAL: Okay, d'accord. Alors, maître Dearden, maître Doody, vous avez reçu bel et bien l'affidavit supplémentaire de monsieur Rancourt?

MR. DOODY: Yes, yes, Your Honour, we received that affidavit in the time set out in the endorsement. We - at least for my part, I believe Mr. Dearden shares this, takes the position that none of the evidence in that affidavit is admissible and we'll be making submissions. I....

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LE TRIBUNAL: Lors de l'audition - lors de l'audition
- at the time of the hearing of the motion.

MR. DOODY: Yes.

LE TRIBUNAL: Okay, d'accord. Donc vous comprenez
c'est lors de la motion - eux ils vont faire des
représentations que l'affidavit supplémentaire n'est
pas conforme ou n'est pas une preuve qui est
admissible. Okay. Alors ce qu'on voulait faire,
s'il était possible aujourd'hui, c'est de tout
d'abord revoir s'il y a des motions qui auront lieu
lors des contre-interrogatoires. Est-ce qu'il y a
des refus à des questions, vous insistez avoir des
réponses?

M. RANCOURT: Oui, Monsieur le Juge. Il y a eu
beaucoup de refus et aussi beaucoup de refus de
produire des documents et donc je prévois une motion
assez importante que je prévois pourrait prendre
trois jours, parce qu'il y avait cinq témoins qui
ont été - qui ont intervenu, j'imagine qu'on va
discuter les champerty - les examinations au
préalables séparément de la motion pour - à moins
qu'on veut faire une motion tout ensemble, parce
qu'il y a aussi eu des refus du côté des
examinations au préalables. Donc je prévois....

LE TRIBUNAL: Les interrogatoires au préalables ont
commencé, hein? Discoveries have started by the
original....

MR. DEARDEN: They've been completed in the seven
hour time limits, Your Honour. April 30th and May
1st this week.

LE TRIBUNAL: Ah, oui, c'est vrai. Okay, right.
Donc vous dites qu'il y a des refus, donc on traite

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également de la question des documents, de
l'adjudication des documents et des refus, hein?

M. RANCOURT: Oui.

LE TRIBUNAL: Alors vous constatez une motion de
combien de jours?

M. RANCOURT: Pardon?

LE TRIBUNAL: une motion d'une durée de trois jours?

M. RANCOURT: C'est-à-dire - d'abord il faudrait
déterminer si c'est préférable de combiner une
motion pour refus et production - refus de
production côté examiné - examination au préalable
avec les refus dans la motion pour champerty, je ne
sais pas si....

LE TRIBUNAL: Bien moi j'aurais cru que ça serait
préférable, je ne sais pas - do you believe the
question is - we're going to do - refusal motions on
the cross-examinations with respect to the champerty
motion and on the discoveries - what sort of - one
global refusal....

MR. DEARDEN: No.

MR. DOODY: My only comment, Your Honour, is I'm not
involved in the discoveries.

THE COURT: Right.

MR. DOODY: With respect to the champerty motion, the
refusals, in which terms the documents and questions
are all of a kind, they - they relate to Mr.
Rancourt's attempt to ask questions and elicit
documents in respect of - in our submission, matters
relating to other disputes he has with the
university and not this, so they're all of a sort.

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THE COURT: So you want to have the champerty motion refuse - champerty cross-examinations separate from the discovery?

MR. DEARDEN: Yes, I think the channel change would be a good thing.

M. RANCOURT: De mon côté j'aurais une préférence que ce soit combiné pour le simple fait qu'il y a un chevauchement des faits, des refus et aussi....

LE TRIBUNAL: Effectivement oui - effectivement, mais....

M. RANCOURT: Si je peux continuer, Monsieur le Juge. L'autre raison c'est qu'il y a des contradictions de témoignage entre ce qui a été dit pendant l'examen pour champerty versus pendant l'examen pour l'examen au préalable et ces contradictions sont quand même importantes et clés et ouvrent la porte à résoudre des problèmes par rapport au refus, et c'est pour cette raison-là que je préférerais combiner les deux ensemble.

LE TRIBUNAL: Mais le problème si on les combine ensemble c'est ça devient très long et ça devient très difficile à trouver des dates qui conviennent à tout le monde et dans l'horaire de la cour, parce que ce qui arrive - nous tombons dans le calendrier de l'été et la disponibilité des juges est moins forte, donc - je pense qu'il est préférable - s'il - il est très difficile de trancher cette question sans savoir les questions, sans avoir la transcription, mais je constate - lorsqu'il y a un contre-interrogatoire sur un affidavit, le champ d'interrogation est - est un peu plus restreint et naturellement, parce qu'on vise une question en

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particulier, c'est-à-dire la question de champerty effectivement. Et ça implique des parties qui ne sont pas impliquées dans les interrogatoires au préalable. S'il y a lieu des contradictions dans les réponses des témoins - vous pourriez peut-être y faire référence lors de l'argumentation, lors de vos représentations, mais lorsqu'il y a un refus, soit de répondre à une question ou de divulguer un document, la question à trancher est toujours la même, c'est la pertinence. Donc je pense qu'il est préférable de - parce que - de la part - c'est très important de trancher cette question de champerty parce que d'après vous vous avez - vous voulez, vous prétendez que ça va imposer un arrêt total.

M. RANCOURT: C'est - Monsieur le Juge, ça pourrait - ça c'est - il y a un éventail de possibilités.

LE TRIBUNAL: Oui, mais à mon avis - oui, d'après vous ça pourrait imposer un arrêt total sur les procédures, l'autre possibilité c'est que vous gagnez - de cause que l'université ne peut pas, mais maître St. Lewis décide qu'elle-même veut procéder avec sa poursuite de libelle diffamatoire ou que la cour rejette complètement la motion. Donc je pense que parce que c'est - c'est très important, on ne voit pas tellement souvent de motion de champerty, je dois avouer ça - ça fait 15 ans que je suis en administration, j'en ai pas vu de ma connaissance, mais - ça n'existe pas, hein, mais - c'est à savoir. Mais je pense qu'on devrait traiter de ça - alors des refus, on parle des refus soit de monsieur Rott (ph), monsieur Feldusen (ph), madame St. Lewis, madame Deslorme, monsieur Giroulx, cinq personnes?

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5 M. RANCOURT: Il y a eu cinq personnes et il y a aussi un - un engagement, en anglais on dit undertaking, que - à partir duquel je n'ai pas eu de réponse encore, donc il y a aussi cette question-là, mais effectivement c'est des refus de production et des refus de répondre à les questions.

LE TRIBUNAL: Alors est-ce que la transcription est faite?

10 MR. DOODY: My friend - sorry, Mr. Rancourt referred to an undertaking, in fact it was a matter taken under advisement by me, and I will be responding to him this afternoon.

15 LE TRIBUNAL: Alors - donc - il prend la question en considération et s'il refuse donc ça devient un refus, hein, il va vous dire soit j'accepte - je vais répondre ou non, je décide que c'est pas pertinent, donc - c'est - on le traite dans ce cas-là comme un refus. Donc ça va nous prendre effectivement une journée pour cette motion?

20 M. RANCOURT: Monsieur le Juge, vous avez posé la question par rapport aux procès-verbaux, donc il y a deux des cinq procès-verbaux pour la partie champerty qui ont été reçues, et il y en a trois qu'on attend. Les délais - on nous informe sont typiquement deux semaines.

25 LE TRIBUNAL: Okay, d'accord, mais la motion n'aura pas lieu dans deux semaines; il est certain.

30 MR. DEARDEN: Now, my understanding, Your Honour, is that we should have the other three transcripts May 14th or - or earlier, which probably in order to give Mr. Rancourt time to - to serve us with his refusals chart, we would be looking at a refusals

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5 motion the week of June 11th or the week of June 18th
and shooting for – because you’re going to deal
with, according to the last endorsement, setting a
date for the champerty motion, looking at maybe the
week of July 9th to actually – of course it’s all
subject to whether you’re available and not already
booked in other cases.

M. RANCOURT: Est-ce que – est-ce....

10 LE TRIBUNAL: Personnel – moi je pars pour l’Afrique
dans deux semaines. Je vais être là pendant trois
semaines.

15 M. RANCOURT: Je – là on a changé un peu de thème,
Monsieur le Juge, on est en train de parler des
dates, mais il y avait avant ça la notion de la
durée que pouvait prendre cette motion et étant
donné le nombre de refus et le nombre de la longueur
de ces procès, étant donné qu’il y a cinq personnes,
j’imagine mal comment on pourrait faire ça dans une
journée, surtout étant donné mon expérience limitée
là du temps que ces motions peuvent prendre.

20 LE TRIBUNAL: Je vais vous dire de mon expérience,
Monsieur Rancourt, il y a longtemps que j’ai fait
une poursuite de la compagnie Accenture contre le
Gouvernement Fédéral et c’est une poursuite où on
réclamait des milliards d’argent et on a eu des
25 interrogatoires puis on a passé des milles de
questions au gouver – parce qu’effectivement qu’est-
ce qui arrive – vous allez voir, Monsieur Rancourt,
c’est que même s’il y a beaucoup de questions, en
fond, c’est toujours la même question qui est
30 répétée de plusieurs façons. En fond c’est la même
question. Donc lorsque le tribunal tranche une

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question, ça règle en grande partie les autres. Et vous allez voir dans la procédure pour une motion de ce genre, il faut créer un tableau et dans ce tableau on réunit toutes les questions qui sont semblables, donc lorsqu'on répond à la question, ça répond aux autres effectivement.

M. RANCOURT: Oui. Monsieur le Juge, j'ai remarqué effectivement qu'il y a des groupes - il y a des thèmes de questions, il y a des....

LE TRIBUNAL: Sur des thèmes.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc - encore dans mon expérience - j'en ai fait pendant une quinzaine d'années, une journée - si on tranche - parce qu'on voit - on voit le thème effectivement et lorsque le - le juge dit pas non, non, c'est pas pertinent, les autres tombent ou soit que c'est pertinent - on se rend compte effectivement - donc une journée en principe ça devrait suffire. Et s'il n'y a pas lieu, si ça prend plus de temps, bien on se trouvera une autre journée - je pense qu'on devrait faire ça dans une journée et je peux vous dire Maître Dearden a proposé la semaine du 18 juin et effectivement selon l'horaire que nous avons, il me paraît que je suis disponible cette semaine-là.

M. RANCOURT: Moi aussi, Monsieur le Juge, je suis disponible la semaine du 18 juin, sauf une journée, le jeudi 21 juin.

LE TRIBUNAL: Donc le 18 juin ça va? La semaine du 18.

MR. DOODY: That's fine, Your Honour.

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M. RANCOURT: Si je peux, Monsieur le Juge, et si c'est disponible de tous les côtés, je préférerais plus tard dans la semaine juste pour me donner plus de temps étant donné l'ampleur....

LE TRIBUNAL: Vous n'êtes pas disponible le jeudi?

M. RANCOURT: Pas le jeudi, mais....

LE TRIBUNAL: Le mercredi ça vous....

M. RANCOURT: Oui, le mercredi serait bien.

LE TRIBUNAL: Mercredi, donc selon l'horaire le mercredi ça serait le 20.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay.

M. RANCOURT: Est-ce que tout le monde est d'accord?

LE TRIBUNAL: Tout le monde est d'accord?

MR. DEARDEN: Yes.

THE COURT: The 20th of June.

MR. DEARDEN: Yes, Your Honour.

THE COURT: Motions for refusals and undertakings, production of - a refusal to produce documents arising out of the cross-examination. À 10h00.

M. RANCOURT: Donc....

LE TRIBUNAL: Et non pas 9h00, 10h00.

M. RANCOURT: Monsieur le Juge, excusez, il y a peut-être eu un malentendu. J'ai compris que ça c'est la date pour que je rendre mon record pour la motion.

MR. DEARDEN: No, no, no.

LE TRIBUNAL: Non, c'est la - l'audition de la motion.

M. RANCOURT: Oh. Ça - ça - ah, okay, je pensais avoir plus de temps pour....

LE TRIBUNAL: Mais effectivement ça vous donne un mois.

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M. RANCOURT: Non, c'est parce que - comme on a déjà établi....

LE TRIBUNAL: La transcription - le procès-verbal vous devriez l'avoir dans quelques semaines.

M. RANCOURT: Oui, mais Monsieur le Juge on a déjà parlé et établi mon problème au mois de mai par rapport à d'autres choses, donc ça me donne pas un mois. J'ai amené mon calendrier ici si vous voulez réexaminer cette question, mais mes semaines du 6 et 13 mai sont complètement bloquées, et j'avais espéré donc avoir un peu plus de temps étant donné la difficulté par rapport à un projet.

LE TRIBUNAL: C'est un mois - c'est un mois. Après - je vois le tribunal - c'est - c'est ici le 17, hein, donc ça vous donne un mois.

M. RANCOURT: Est-ce que - Monsieur le Juge, ça serait possible de le faire un peu plus tard, juste pour que j'aie bien le temps de faire le....

LE TRIBUNAL: C'est la difficulté de trouver des dates pendant l'été.

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: C'est parce que le 20 je suis disponible, ça se fait. C'est suffisamment - vous connaissez les questions, vous les savez présentement, vous avez tout simplement - la question c'est la pertinence.

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Donc c'est pas une jurisprudence compliquée, est-ce que c'est pertinent, oui ou non. Et on les réunit sous un thème.

M. RANCOURT: Est-ce qu'on pourrait, pour m'accommoder, accepter donc que je donne le document

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- c'est-à-dire ce qu'on appelle en anglais le motion record pas plus tôt que - je ne sais pas les règles là, mais....

LE TRIBUNAL: C'est quatre jours auparavant.

M. RANCOURT: Pardon?

LE TRIBUNAL: Quatre jours auparavant.

M. RANCOURT: Quatre jours auparavant ça m'irait très bien, parce que ça me permettrait de pas le donner avant la semaine du 10 par exemple.

LE TRIBUNAL: Oui.

MR. DEARDEN: Your Honour, speaking for myself, I would have hope that we would have had service of Mr. Rancourt's refusal motion no later than June the 8th, which would then give us the following week to respond, so - put something in June 15th and then we argue it June 20th.

LE TRIBUNAL: Le 8 c'est le vendredi.

M. RANCOURT: Non, je suis - je suis - je préférerais la semaine d'après, ça leur donnerait 12 jours, je pense pas que c'est nécessaire. Je préférerais le rendre le 12, j'aimerais bien rendre mon document le 12. Je vais avoir besoin de chaque jour, Monsieur le Juge.

LE TRIBUNAL: Donc on va faire ça le - le....

MR. DOODY: Well, Your Honour, if Mr. Rancourt will need every day between now and June the 12th to prepare it, what he is suggesting is that we have five business days to - to prepare a response that he says he's going to need a month to prepare, I would have thought, in my submission, that making him serve it on Friday the 8th and giving us a week to respond so that Your Honour has an opportunity to

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have our materials over a weekend and two days - two full days before the hearing would have been fair to all concerned, including the Court.

5 M. RANCOURT: Monsieur le Juge, ça leur donne huit jours calendrier et ils ont beaucoup plus de ressources que moi. Et moi j'ai - dans mon expérience avec ce qu'on vient de passer, j'ai vraiment besoin de chaque jour. J'ai - je vois mal comment....

10 LE TRIBUNAL: Le 11 le plus tard, le lundi matin le 11. Donc lundi matin....

M. RANCOURT: D'accord.

LE TRIBUNAL: Avant 10h00 lundi matin.

15 M. RANCOURT: D'accord. Le seul petit problème c'est....

LE TRIBUNAL: Donc vous avez le weekend mais vous allez signifier votre - le dossier de motion avant le - 10h00 le lundi matin, 11 juin.

20 M. RANCOURT: Avant 10h00 le lundi matin, très bien, Monsieur le Juge.

LE TRIBUNAL: Avant 10h00 et - la motion elle-même aura lieu le 20 à 10h00. Donc on tranchera lors - de cette question-là, les refus et - si je - je décide que les refus n'étaient pas - n'étaient pas raisonnables, donc il y aura lieu de répondre soit une autre interrogatoire ou de fournir une réponse, mais la ques - l'autre date qu'il faut fixer maintenant c'est la date pour l'audition de la motion en champerty elle-même, et c'est là où maître Dearden avait proposé une date au mois de juillet.

30 M. RANCOURT: Au mois de juillet. Je vais prendre mon calendrier un peu plus....

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5 LE TRIBUNAL: Donc je pense que maître Dearden avait proposé une semaine - la semaine du 9 juillet. Et encore - il me serait peut-être possible, je dois vous avertir que le mois de juillet c'est assez difficile pour moi. Le mois d'août ça va mieux, mais j'aurais plus de disponibilité au mois d'août.

10 M. RANCOURT: Monsieur le Juge, est-ce que ça serait possible de voir comment se passe la première motion et s'il y a eu lieu de faire un suivi pour ensuite....

15 LE TRIBUNAL: Mais ce qu'on va faire - ce qu'on fait souvent, Monsieur Rancourt, c'est que - on - nous fixons une date présentement, s'il y a pas de problème lors de la motion, c'est de savoir - si c'est résolu, donc on procède à la date, s'il y a des problèmes, donc la date est annulée.

M. RANCOURT: Ou la date pourrait servir pour le suivi.

20 LE TRIBUNAL: Le suivi, oui. Donc il est mieux de choisir une date présentement, parce que qu'est-ce qui va arriver c'est au mois de juin pour trouver une date - on aura encore des difficultés. Alors en principe je suis là la semaine du 9 juillet, mais de ma part, je peux vous dire que ma préférence ça serait que ça soit entre le 23 juillet jusqu'au 7 août je suis là, pendant quatre semaines.

25 M. RANCOURT: Moi aussi parce que cette date du 9 juillet me donnerait pas le....

LE TRIBUNAL: 9 - la semaine du 9.

30 M. RANCOURT: Du 9 - oui, la semaine du 9 juillet me donnerait pas le temps de préparer la motion de champerty elle-même.

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LE TRIBUNAL: Mais la motion de champerty - donc entre ces dates-là, entre le 23 et le 17 août.

MR. DOODY: Your Honour, I am away between the 23rd of July and the 14th of August. I apologize.

LE TRIBUNAL: Le - the 27th of August? C'est possible. La semaine du 27.

M. RANCOURT: Pour moi c'est possible.

LE TRIBUNAL: Okay, la semaine du 27. Il va falloir que j'entre en communication avec quelqu'un parce que nous avons - ce que nous appelons, Monsieur Rancourt, une semaine de rota - c'est-à-dire on fait le tour dans la région et c'est ma semaine de rota, c'est-à-dire donc je dois me promener Brockville, Belleville et ces lieux-là, donc c'est toujours possible, il va falloir que je fasse l'échange avec - voilà. Mais - est-ce qu'on peut laisser ça tout simplement pour la semaine du 27 et on va vous prévenir de la date, est-ce que vous êtes tous disponible toute la semaine?

M. RANCOURT: Sauf le 30, Monsieur le Juge.

LE TRIBUNAL: Le 30 c'est quoi, le vendredi?

M. RANCOURT: C'est un jeudi.

LE TRIBUNAL: Un jeudi. Sauf le 30. Parce qu'il va falloir effectivement que - encore parce que - je remarque en plus que c'est région de l'est, c'est-à-dire des cours francophones. Donc - bien - on va se trouver une date, mais laquelle, je ne sais pas encore. Ça va? Donc, voilà - la motion pour entendre les refus c'est le 20 juin à 10h00, vous allez signifier votre cahier, votre dossier de motion avant le 11 - avant le 11 juin à 10h00. La

motion - la motion champerty sera entendue la
semaine du....

MR. DEARDEN: August 27th.

LE TRIBUNAL: Sauf - non, pas le 30.

MR. DEARDEN: And Your Honour, we're talking one day
for the champerty motion argument?

THE COURT: Yes. One day. Une journée ça devrait
finir.

M. RANCOURT: On peut - là j'ai - j'ai pas assez
d'expérience pour juger le temps, mais je - je -
j'estime que ça....

LE TRIBUNAL: C'est dans le genre de motion de
jugement sommaire, dans mon expérience, ça
devrait....

M. RANCOURT: À ma connaissance des points que je
veux soulever, je crois que ça prendrait deux jours.

LE TRIBUNAL: On va faire une journée puis on verra.
Et finalement, pour aujourd'hui - est-ce que c'est
tout?

MR. DEARDEN: No, Your Honour, we need to set...

THE COURT: Yes. Les motions - cross-examinations.

MR. DEARDEN: ...dates for refusals on - examination
for discovery.

THE COURT: Les refus - the examination for
discovery. Une motion pour les refus lors des
interrogatoires - do you have some as well?

MR. DEARDEN: Yes.

LE TRIBUNAL: Okay, des deux côtés.

M. RANCOURT: Oui. Il y a aussi - moi je - je ne
connais pas exactement la procédure là, mais je veux
faire une motion pour avoir plus de temps en

interrogatoire et pour aussi amener en interrogation au préalable un autre témoin.

LE TRIBUNAL: Ça ferait partie du même genre de chose. Ça ressort des interrogatoires, c'est une question donc il me prend plus que sept heures et pourquoi - la question de refus et la question à trancher c'est à savoir s'il y a lieu qu'il y aura un autre témoin de la part de l'uni - de la part de madame St. Lewis.

M. RANCOURT: De la part de madame St. Lewis, c'est bien - effectivement.

LE TRIBUNAL: Okay. You're not involved in that?

MR. DOODY: This is - well, this is the first I've heard of it and I'm asking through you whether this other witness that he's talking about is - is somebody associated with the university, because if so I will become involved in it I expect.

LE TRIBUNAL: La personne que vous voulez examiner, est-ce que vous êtes prêt à le divulguer présentement, parce que....

M. RANCOURT: Est-ce que ça serait avantageux que je le divulgue tout de suite?

LE TRIBUNAL: Mais autrement - donc nous arrivons à la motion et vous dites « Là je veux examiner quelqu'un de la part de l'université. » et donc maître Doody est pas là, il est bel et bien certain que maître Dearden va demander des frais.

M. RANCOURT: Des frais pour....

LE TRIBUNAL: Oui, perdu - si on est prêt à procéder puis on ne peut pas procéder.

M. RANCOURT: Ah, oui, d'accord. Alors je prévois demander à examiner au préalable monsieur Robert

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Major qui est un ancien de l'Université d'Ottawa, mais qui est présentement à la retraite et qui était une figure centrale dans – dans le cas principal.

LE TRIBUNAL: Monsieur Major?

M. RANCOURT: Oui, c'est un monsieur Robert Major.

LE TRIBUNAL: Robert Major. Does that mean anything to you?

MR. DOODY: I don't know who that gentleman is, Your Honour.

M. RANCOURT: Alors je peux expliquer si c'est nécessaire, mais c'est un – c'est le vice-recteur académique de l'époque où les – les éléments du cas principal de diffamation ont eu lieu. Et on m'a informé que – l'autre partie n'a pas l'intention d'amener cette personne comme témoin et il s'avère que c'est absolument nécessaire d'examiner cette personne-là.

MR. DEARDEN: Your Honour, now that I've – I know who – who he is referring to and I will be vigorously opposing any third party examination for discovery motion that he will be bringing of Robert Major. He can subpoena him for trial, but it's certainly not third party discovery.

LE TRIBUNAL: Vous connaissez la distinction, hein?

M. RANCOURT: Non.

LE TRIBUNAL: Dans notre juris – dans notre procédure ici au Canada, les interrogatoires au préalables existent entre les parties, donc lorsque c'est une poursuite surtout en libelle diffamatoire de la part de madame – de maître St. Lewis, c'est elle la personne, mais si vous convoquez un témoin au procès, vous pouvez le faire.

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5 M. RANCOURT: Oui, mais je - je - j'aimerais mieux -
parce que si je comprends bien - si je témoigne un -
si j'amène un témoin au procès, ça sera pas
quelqu'un que je peux contre-examiner, alors - alors
que si je - j'amène cette personne-là en examination
au préalable le mode est différent et ça me permet
de vraiment découvrir.

10 LE TRIBUNAL: Mais le test pour convoquer une
personne à l'interrogatoire au préalable est tout à
fait différent - c'est-à-dire dans la poursuite de
libelle diffamatoire, qui est tout à fait personnel
de la part de madame St. Lewis - de maître St.
Lewis, il faut dépasser un certain test, c'est-à-
dire que je n'ai pas eu de réponse de la part de
15 madame St. Lewis alors....

M. RANCOURT: Ça serait une tierce personne et donc
qui a des informations cruciales, c'est - c'est
maintenant très clair ce point-là et donc je....

20 LE TRIBUNAL: Vous allez poser la question - mais -
l'important pour aujourd'hui, je veux pas m'en mêler
trop là, c'est - c'est à savoir si maître Doody doit
répondre ou non. Do you have to be there?

25 MR. DOODY: Well, I really don't know, Your Honour,
because I don't have any instructions, but I would
suggest that the safe course would be to put it on a
date when I was available in case I get those
instructions.

THE COURT: So you need another day for those
motions?

30 M. RANCOURT: Monsieur le Juge, j'aimerais juste
signaler et juste demander une clarification, mais
monsieur Doody - son état actuel c'est qu'il a - il

est un partie qui intervient dans la motion pour champerty uniquement. Alors que maintenant c'est par rapport aux examinations au préalables.

LE TRIBUNAL: Oui, mais là c'est dans ce cas-là où il se - monsieur Major là - Major?

M. RANCOURT: Oui. Monsieur Robert Major.

LE TRIBUNAL: Il aurait droit de se faire représenter par un avocat.

M. RANCOURT: Oui.

LE TRIBUNAL: Autre que maître Dearden.

M. RANCOURT: Oui.

LE TRIBUNAL: Et il se peut que ça sera monsieur Doody; je ne sais pas.

M. RANCOURT: Oui, mais ça sera à monsieur Major de choisir son avocat quand qu'il va recevoir la notice pour apparaître.

LE TRIBUNAL: Mais comme c'était maître Doody pour monsieur Rott (ph), monsieur Giroulx et les autres membres du cadre professionnel de l'université, l'équipe, on peut présumer que peut-être que ça va être lui. En tout cas, on va - il faut se trouver une autre date. C'est l'autre date - donc le - l'interrogatoire - ça aura lieu après la motion champerty - they think there's a criminal trial, we have a lot of students.

Discussions sur autre matière au rôle.

MR. DEARDEN: Your Honour, I know you have to go so maybe if we can just set a date for the refusals motions in the liable action and then Mr. Rancourt should be given a time limit as to when he's going

5 to file and serve his motion for more time for
discovery which I will most certainly be opposing,
and then that third party discovery motion, then we
can do the dance of diaries another day, on those
two motions, but he should - within the next two
weeks, serve his - those other motions, and then
we'll decide what date it is on another case
conference, just to expedite things here.

10 M. RANCOURT: J'ai mal compris - bien, j'ai cru
comprendre que monsieur Dearden veut diviser les
questions dans différentes motions et je ne sais pas
si c'est une bonne idée de faire ça, je ne sais pas
si ça serait une bonne utilisation des ressources.
15 Moi la façon que je comprends ça c'est que - il y
aurait une motion pour les refus qui me concerne et
une autre motion un autre jour pour les refus qui
concerne l'autre partie par rapport aux examinations
au préalable et donc dans la motion où je traiterais
de mes refus, j'aimerais mes arguments par rapport à
20 examiner une autre personne et mes arguments pour
avoir plus de temps et mes arguments par rapport au
refus des productions et....

LE TRIBUNAL: Monsieur Dearden - maître Dearden a
également....

25 M. RANCOURT: Oui.

LE TRIBUNAL: De ses motions - quant à vos refus,
VOUS....

M. RANCOURT: Oui.

30 LE TRIBUNAL: Donc il nous - il faut fixer une date
pour l'audition de cette motion et on....

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M. RANCOURT: Oui, mais Monsieur le Juge, je - si je comprends bien, on parle de deux motions parce que c'est....

LE TRIBUNAL: Bien, c'est deux motions séparées.

M. RANCOURT: Oui. Et donc j'ai une nette préférence qu'on essaie pas de faire les deux motions dans une journée à la même - à la même date. Ah, d'accord.

LE TRIBUNAL: Une date - une date - est-ce qu'on pourrait le faire....

MR. DEARDEN: The week of June 18th, Your Honour? For - I'm just talking about the refusals motion I'm going to bring and Mr. Rancourt's refusals and the one he's going to bring on Professor St. Lewis' refusals, like the 18th or 22nd.

M. RANCOURT: Monsieur le Juge, absolument pas possible pour moi.

THE COURT: We've already - la semaine du 10 septembre?

INTERPRÈTE: Désolé, Monsieur le Juge, l'interprète n'a pas compris, vous avez dit le 10 ou le 17?

LE TRIBUNAL: 10 septembre.

MR. DEARDEN: That's when I'll be in Africa. I'm in Africa for over three weeks of September, Your Honour. And I don't know what state I'm going to come back in. So I leave on the 5th of September.

LE TRIBUNAL: Moi je présume que je vais - quand? Le 1^{er} octobre?

MR. DEARDEN: For a refusals motion, Your Honour? I - I....

THE COURT: This is refusal, production of a third party and more discovery.

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MR. DEARDEN: Your Honour, we were - we were - as you know....

THE COURT: Unless we double them up and do them over two days in July.

MR. DEARDEN: We have to get the discoveries done, Your Honour, and as you know, Professor St. Lewis has this weighing on her pretty heavily and would like a trial date as soon as possible.

THE COURT: Yes, I know.

MR. DEARDEN: Mr. Rancourt can tell us that he needs more time but this - he's - he's - he has some control, he wants to bring all of these motions and he's bringing all of these motions, but these refusals should be pretty easy to deal with on - on the examinations for discovery.

THE COURT: The thing is we don't have - if we do the 18th, the week of the 20th - we - we need more than one day.

MR. DEARDEN: Pardon?

THE COURT: We'd need more than one day.

MR. DEARDEN: For just the refusals?

THE COURT: For both, the refusals and cross-examination and all the other stuff we need to do.

MR. DEARDEN: But that's what I'm segregating out here, Your Honour, this is the first I've learned that Mr. Rancourt is going to seek third party discovery, he did indicate at the examination for discovery that he was going to request more time and I told him I would be opposed in light of the areas that he was wasting his time examining on, but he has to deal with the refusals motion sometime in June.

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THE COURT: No, I understand. I'm just saying if - if you want to do them sooner, then we have to give two days in June, the week of June 20th.

M. RANCOURT: Je - personnellement j'aurais beaucoup de mal à faire deux choses deux jours consécutivement.

LE TRIBUNAL: Bien vous avez demandé trois jours.

M. RANCOURT: Non, je - si je comprends bien on parle des deux motions pour les refus vis-à-vis des examens au préalable si j'ai bien compris, est-ce qu'on parle de ça? Et donc je voudrais pas que leur motion soit un jour et la mienne tout de suite le lendemain, c'est ce - c'est ce que j'exprime.

LE TRIBUNAL: Bien là je les entends en même temps - en même temps.

M. RANCOURT: Pardon?

LE TRIBUNAL: Ils s'entendent en même temps. Il y a deux motions - on a prévu une motion le 20 juin, ça c'est à propos des refus, des contre-interrogatoires, monsieur Giroulx et le reste...

M. RANCOURT: Oui.

LE TRIBUNAL: ...hein, c'est les affidavits.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est le 20 juin.

M. RANCOURT: Oui. Et....

LE TRIBUNAL: Moi je dis et maître Dearden voudrait traiter des autres refus, des engagements - des refus lors des interrogatoires au préalable entre la poursuite de libelle diffamatoire, donc entre vous et madame St. Lewis, maître St. Lewis. Et lors de cette motion vous lui demandez - vous vous dites il y a la question de refus, il y a la question de - un

temps additionnel et le - la question est-ce que vous allez examiner un autre témoin.

M. RANCOURT: Oui. Et monsieur....

LE TRIBUNAL: Lui il aura des questions. Alors - oui, c'est une journée séparée, c'est une motion séparée. Et moi je propose - est-ce qu'on pourrait le faire la semaine du 18 juin, donc c'est deux journées différentes qui traitent de différentes choses.

M. RANCOURT: Absolument pas, Monsieur le Juge. On a déjà cette semaine du 18 juin la motion pour les refus dans champerty et tout mon temps, jusqu'à ce jour-là est pris à préparer cette chose.

LE TRIBUNAL: Les questions se ressemblent.

M. RANCOURT: Absolument pas, Monsieur le Juge. Je ne peux pas faire ça. J'estime que ça serait - ça m'empêcherait de faire mon cas de façon juste.

LE TRIBUNAL: Donc....

MR. DEARDEN: Your Honour, if I could, it is impossible that every day between now and June the 20th will be occupied solely with the refusals on the cross-examinations, which didn't take all that long by the way, and Mr. Rancourt has to realize he's in a liable action that is seriously affecting the reputation of Professor St. Lewis and we could give him a day in between. I mean what's he going to do at trial? He says he can't go back to back, I mean we're talking a two week trial that's going to be back to back to back days. So either he does it on the 18th and has a day off and then he can argue the cross-examination refusals or June 20th you

argue the cross-examination refusals, take a day off on the 21st and argue the motion the 22nd.

THE COURT: Well, let's do it - how about the week of the 23rd of July, we'll do it without Mr. Doody?

MR. DOODY: That's fine, Your Honour, unless I'm retained on this third party - I just have no idea. If my friend - sorry, if Mr. Rancourt had asked me beforehand, I could have found out, but he decides to - to do it now.

THE COURT: Because they'll have to get somebody to deal with that. Okay. 23rd.

MR. DEARDEN: All three. All three motions, Your Honour, so the liable action, refusals motions, his motion for more time in his third party discovery motion, July 23rd?

M. RANCOURT: Excusez-moi, là maintenant on parle de trois motions, alors je suis un peu confus.

LE TRIBUNAL: Bien c'est une motion où vous demandez trois choses.

M. RANCOURT: Oui. Donc....

LE TRIBUNAL: Une question de refus, vous voulez du temps additionnel - ça rentre - c'est le même enjeu de la question de refus, c'est-à-dire ça me prend plus de temps effectivement parce qu'on refusait mes questions, et - et je demande une personne autre que madame - maître St. Lewis parce qu'elle me donne pas de réponse ou il y a des renseignements que je ne peux pas avoir d'elle ou quoi que - je ne sais pas le motif là, mais c'est une motion où vous demandez trois choses.

M. RANCOURT: Oui, Monsieur le Juge, j'aimerais juste donner des clarifications. Premièrement, le - le

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temps additionnel est pas seulement dû aux refus,
c'est dû à un gaspillage de temps avec....

LE TRIBUNAL: Oui, oui, oui.

M. RANCOURT: Oui.

LE TRIBUNAL: Oui, oui. Non, non, là je....

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay.

M. RANCOURT: Et puis l'autre....

LE TRIBUNAL: Mais c'est - souvent ça se - c'est les
mêmes faits qui soulèvent tout ces points-là.

M. RANCOURT: Oui.

LE TRIBUNAL: Alors....

M. RANCOURT: Et l'autre point que j'aimerais
signaler tout de suite pour garder ouvert mon droit
d'amener cette chose-là c'est que - il est possible,
et je vais le savoir plus quand je vais voir les
procès-verbaux de ces examinations-là, mais il est
possible que je demande aussi une autre personne en
plus de monsieur Robert Major et ça serait un
monsieur Henri Wong qui est aussi directement
impliqué dans cette affaire et qui - où je n'ai pas
pu avoir les informations qui le concerne
directement.

LE TRIBUNAL: La semaine du 23.

MR. DEARDEN: Henri Wong, W-O-N-G, sorry, Your
Honour.

LE TRIBUNAL: Le 23 juillet, ça va tout le monde?
Quel jour?

M. RANCOURT: Pas le - pas le jeudi 26, Monsieur le
Juge. C'est pas possible pour moi.

MR. DEARDEN: 24th, Your Honour.

LE TRIBUNAL: Oui, le 24, c'est le vendredi.

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MR. DEARDEN: Of July?

LE TRIBUNAL: Non, c'est un mardi plutôt. Yes, July 4th is the Tuesday.

M. RANCOURT: Donc ça serait le 24 juillet pour la motion qui me concerne, les refus qui m'inquiètent moi, mais la motion séparée pour les refus qu'eux cherchent....

LE TRIBUNAL: C'est la même date.

M. RANCOURT: Ah, bon. Dans ce cas-là j'imagine mal que ça puisse se faire dans une journée. Comme vous dites....

LE TRIBUNAL: Bien, si ça prend du temps - si ça prend du temps additionnel, on verra, mais....

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay. Donc c'est le 24 juillet.

MR. DEARDEN: And when will those notices be served, Your Honour?

LE TRIBUNAL: Donc - bon, il faudrait signifier au moins 10 jours auparavant, hein.

M. RANCOURT: Est-ce que - est-ce qu'on pourrait simplement se - aller d'après les règles, je crois que c'est sept jours? Je ne sais pas....

LE TRIBUNAL: Vous allez - qu'est-ce qui va arriver c'est que - you're going to serve cross motions on seven days before and reply within the responding time. Vous acceptez, hein?

M. RANCOURT: Bien....

LE TRIBUNAL: Ça c'est quatre jours.

M. RANCOURT: C'est - moi - moi je suis flexible sur cette question-là, ça peut être sept, on peut l'allonger au-delà de ce que les règles prévoient, mais - je suis flexible.

LE TRIBUNAL: Selon les règles de procédure, c'est sept jours auparavant, et la réponse quatre jours auparavant. Donc ça vous donne trois jours à répondre.

M. RANCOURT: Je suis flexible si - si l'autre partie veut....

LE TRIBUNAL: Est-ce qu'on est prêt à accepter le - are you ready to go by the time periods according to the rules in terms of service of documents?

MR. DEARDEN: Sure, Your Honour.

THE COURT: Okay.

M. RANCOURT: Très bien.

LE TRIBUNAL: Okay. Bon. So - le 24 juillet à 10h00. Donc c'est la motion en champerty - non, nous avons le 20 - les dates qui suivent - c'est la motion aux refus - question des refus c'est les interrogatoires sur les affidavits au préalable, c'est le 20 juin. Monsieur Rancourt, vous allez signifier votre dossier de motion avant le 11 juin à 10h00. La date qui suit ensuite c'est le 24 juillet à 10h00, ça c'est les refus des interrogatoires de madame St. Lewis - maître St. Lewis - c'est les deux - les deux parties qui apportent des motions à ce moment-là et ça inclus également votre demande d'avoir un temps additionnel pour les interrogatoires et le droit d'examiner d'autres - des tierces parties. Et vous allez signifier vos documents selon la règle de procédure. Et finalement la - l'autre date qu'on a pu établir aujourd'hui c'est une motion - l'audition de la motion en champerty qui aura lieu la semaine du 27 août sauf autre que le 30 août. C'est une journée

et les documents – les cahiers de motion, les dossiers de motion seront signifier encore selon les règles de procédure. Effectivement les dossiers de motion ont déjà été signifiés, ça va. Donc....

5 M. RANCOURT: Monsieur le Juge, il y a une autre question par rapport à cette motion champerty. Il y a de l'information importante qui va sortir le 14 mai de mon syndicat, j'ai une lettre ici de mon syndicat qui informe qu'il y a des informations que moi j'estime très pertinentes qui vont – auxquelles on va avoir accès, qui vont sortir dans le domaine public le 14 mai lors d'un arbitration. J'ai une lettre à cet effet-là que je veux partager avec vous et je demande simplement conseil à savoir comment je
10 peux amener cette nouvelle information dans – pour la motion de champerty.

15 LE TRIBUNAL: Mais je connais pas de quoi vous parlez.

M. RANCOURT: Ah, voici la lettre.

20 MR. DEARDEN: And neither do we, Your Honour.

M. RANCOURT: Alors voici la lettre, Monsieur le Juge.

MR. DOODY: He wants to hand him evidence?

MR. DEARDEN: Yes.

25 M. RANCOURT: Donc j'estime que ces documents sont très pertinents à la question de maintenance et de champerty, et j'aimerais savoir comment je peux faire rentrer dans le record les documents – certains de ces documents-là pour ma motion sur champerty qui aura lieu le 27 août – la semaine du
30 27 août. J'aimerais votre direction sur la question....

5 LE TRIBUNAL: Mais comme c'est là vous avez des -
vous avez déjà donné un affidavit supplémentaire
qu'ils n'acceptent pas. Alors c'est - si ça serait
à moi, il va falloir que - il m'est très difficile
parce que c'est moi qui va présider ce jour-là pour
vous donner une réponse exacte, sans connaître le
contexte, il est toujours possible de demander,
lorsque vous faites vos représentations, que je
reçoive ces documents-là, que je les prenne en
10 considération. L'important dans tout ça c'est de le
signifier au plus tôt que possible à maître Dearden.
Si vous le signalez à maître Dearden, vous dites
« Écoutez, lors de l'argumentation, la motion de
champerty devant le Monsieur - du Juge Beaudoin,
j'ai l'intention de faire référence à ces
15 documents. »

M. RANCOURT: Monsieur le Juge, je veux - je voudrais
les mettre en évidence, c'est - c'est ça mon but,
c'est de mettre....

20 LE TRIBUNAL: Bien vous allez - vous allez demander
que je les reçoive....

M. RANCOURT: Et donc je - je les mettrai en évidence
avec un affidavit en disant voici les documents que
j'ai reçu lors de ce processus. Je voudrais les
25 mettre en évidence, être certain qu'ils puissent
être reçu en évidence....

LE TRIBUNAL: Et encore, ça sera une question - tout
comme maître Dearden et maître Doody ont dit que
votre affidavit supplémentaire ne devrait pas être
30 reçu, je pense que l'argument se fera à ce moment-
là.

MR. DEARDEN: Your Honour, the reason we're objecting to his so called supplementary affidavit in response to Mr. - which was supposed to be in response to Mr. Giroulx' examination that he did, is that it isn't in response to anything Mr. Giroulx said and therefore is inadmissible. This move that he's now trying to play - I just find as shocking. He wants to add more evidence in. This isn't going to be stuff that got created yesterday. This is stuff that they've had all along and he had to put his evidence in, not - you gave him an opportunity to put more evidence in after Mr. Giroulx was examined, and now he wants to add more evidence and he can't. THE COURT: His question is "How do I do that?" and I'm telling him at this point in time he'll have to try it on the day of the motion. And we'll hear - we'll....

MR. DEARDEN: And just don't - just....

THE COURT: I'll look at it and I'll see what it is then.

M. RANCOURT: Donc....

MR. DOODY: So that my - just so that Mr. Rancourt is not surprised, it will be my submission, should he attempt to enter it at the hearing, that that is too late, that he is bound by the rules of procedure which require that he have filed all of the evidence upon which he relies before he commenced cross-examination of his opponents' witnesses. That there is a test laid out in the rules for attempting to put in evidence thereafter, which would have to be met - he would have to bring a motion for that purpose and with - and - and my position, not having

any idea what this material is, is that - so that Mr. Rancourt is not taken by surprise, my client is reserving all of its remedies with respect to opposing the admission of these materials.

5 M. RANCOURT: Alors, Monsieur le Juge, j'aimerais répondre à ça. D'abord ces documents - j'avais - je n'ai personnellement pas accès parce qu'ils sont sous....

10 LE TRIBUNAL: Okay, malheureusement je n'ai plus le temps. Je vais tout simplement - la date est prévue pour la mention champerty et si vous voulez, lors de - avant la motion, lors de l'audition de la motion, présentez un affidavit - ils sont au courant aujourd'hui que vous avez l'intention de faire, vous avez entendu ils s'opposent, qu'il y a un certain test à surmonter à ce moment-là - on entendra l'argumentation ce jour-là.

15 M. RANCOURT: Monsieur le Juge, je viens d'être informé et rappelé des règles qui s'appliquent ici et donc je - je veux mettre de l'avant une motion pour obtenir la permission de mettre ces....

20 LE TRIBUNAL: J'ai pas le temps, malheureusement. Non, non, je n'ai pas le temps. Vous allez - il va falloir que vous l'apportez en même temps que votre motion de champerty.

25 M. RANCOURT: Mais je vais donner l'affidavit d'avance pour qu'ils puissent être bien au courant des informations.

30 LE TRIBUNAL: Bien, si vous voulez le faire il va falloir que ça sera entendu au même moment que la motion champerty.

M. RANCOURT: D'accord, mais je vais quand même informer l'autre partie le plus tôt possible.

LE TRIBUNAL: Oui, oui, mais vous allez le faire en même temps.

M. RANCOURT: C'est-à-dire argumenter la motion....

LE TRIBUNAL: On va l'argumenter avant l'audition de la motion en champerty, ça sera la première étape.

M. RANCOURT: Je suis d'accord et je m'engage à informer l'autre partie le plus tôt possible de mon affidavit que je vais vouloir demander qu'il soit reçu.

LE TRIBUNAL: Okay. So the motion to file a further affidavit will be heard at the outset of the motion for champerty. Can't get another date.

MR. DEARDEN: Yes. Yes, I understand, Your Honour.

MR. DOODY: Yes.

MR. DEARDEN: Thank you and just an informational point, Your Honour, a jury notice has been served on the plaintiff by Mr. Rancourt, just as a point of information for the Court.

M. RANCOURT: Oui, c'est vrai. Il y a un autre point, Monsieur le Juge que je tiens à signaler qui est très court, dans les documents que vous avez reçu de monsieur Dearden par rapport aux coûts, cost thrown away, il y a dans un des documents celui qui est relié, qui est un peu plus gros, si vous le regardez, Monsieur le Juge. Celui qui est relié, pas celui qui est simplement broché ensemble. Alors si c'est bien le document de monsieur Dearden, le paragraphe 14 de ce document – alors ce paragraphe 14 ainsi que l'onglet trois, ce sont des nouveaux arguments qui seraient normalement pas permis en

réponse, c'est des choses qui ne sont pas pertinentes, qui sont très, très judiciables et qui sont hors contexte, qui sont pris hors contexte, donc je demande que cette partie soit radiée.

LE TRIBUNAL: Écoutes, je me rends compte de ce qui est permis. D'accord. Il y aura un...qui sera publié la semaine prochaine, donc que je prenne pause d'une quinzaine de minutes avant qu'on reprend le procès criminel. Okay, merci. Donc les dates clés, le 20 juin, le 24 juillet le - la semaine du 27, c'est ça, août, sauf que le 30.

M A T I È R E A J O U R N É E

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Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Linda A. Lebeau, certify that this document is a true and accurate transcript of the recording of St. Lewis v. Rancourt in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario taken from Recording No. 0411-24-2012-05-04 which has been certified in Form 1.

JUL 10 2012

Date

Linda A. Lebeau
Linda A. Lebeau

COUR SUPÉRIEURE DE JUSTICE
(DIVISION CIVILE)

E N T R E :

JOANNE ST. LEWIS

(Demanderesse)

E T

DENIS RANCOURT

(Défendeur)

M O T I O N

(INTENTÉE PAR LE DÉFENDEUR)

ENTENDUE DEVANT L'HONORABLE JUGE ROBERT N. BEAUDOIN
Mercredi, le 20 juin 2012 à Ottawa

(T o m e I)

Comparutions:

R. Dearden

Avocat pour la défenderesse

D. Rancourt

Pour lui-même

P. Doody

Avocat pour l'Université d'Ottawa

**Mercredi,
le 20 juin 2012.**

(11h10)

THE COURT: Apologize. Apparently a flood on the fifth floor did more than damage carpets.

Premièrement, la première question à poser: on procède dans quelle langue?

M. RANCOURT: C'est un processus bilingue mais – oui, moi, je vais me conformer en français.

LE TRIBUNAL: Donc vous faites vos représentations en français.

M. RANCOURT: Tout à fait.

LE TRIBUNAL: Parce que toute la documentation est en anglais, donc je demande.

M. RANCOURT: Oui, c'est vrai. Oui.

LE TRIBUNAL: Okay.

M. RANCOURT: Est-ce que c'est.... Puis moi, je suis beaucoup plus confortable à l'oral en français.

LE TRIBUNAL: D'accord. Mais vous acceptez que M. Dearden – Me Dearden et Me Doody puissent faire leurs représentations en anglais sans qu'il y ait de traduction?

M. RANCOURT: Tout à fait.

LE TRIBUNAL: D'accord. Et que je vais répondre en anglais, dans leur langue – s'il y a communication avec moi, que je réponds dans leur langue?

M. RANCOURT: Tout à fait.

LE TRIBUNAL: D'accord.

Donc, c'est pas – les interprètes – lorsque Me Dearden et Me Doody vont faire leurs

représentations en anglais, il y a pas besoin – aucune nécessité de faire de traduction simultanée.

L'autre chose que je dois vérifier, c'est l'inscription du 4 mai. Il y quelques erreurs.

Premièrement on avait noté que la date de la motion extra-parties serait le 25. C'est le 29 août.

Ensuite, il y avait indiqué que c'était la demande de la demanderesse pour déposer un affidavit additionnel, mais c'était plutôt le défendeur.

Et, finalement, il y a une erreur sur la version française à ce que la motion qui traite des refus, c'était indiqué, la version française, le 24 juin. C'est le 24 juillet.

Donc, il y a eu quelques erreurs. Les modifications sont là, la version anglaise, telle que corrigée, est là. Donc nous ferons en cour.... Me Dearden, Me Doody – les versions. Les versions anglaises sont là; les versions françaises sont à suivre – les inscriptions modifiées.

MR. DEARDEN: Your Honour, could I just deal with a housekeeping matter?

THE COURT: Mm-mmm.

MR. DEARDEN: I am holding, Your Honour, a new toy that I discovered called an Echo smartpen. Apparently it is being used in Toronto by the judiciary there as well. It will record. I take notes and it will record what's said. And I am seeking permission pursuant to the *Courts of Justice Act* s. 136 to be able to use this pen for notekeeping purposes. But it does record what people say and, just to get you intrigued with this little device, you can press it at the point where you take the notes

and it will replay what the person said at that point in the notes forward. It's a fabulous.... I used it in the pre-trial conference seminar the other day. If the acoustics are loud enough, it picks it up. It's not on right now. I can take notes with this pen, but I want to use it to record what's said.

THE COURT: I have no objection.

MR. DOODY: I just want it known I'm jealous, Your Honour.

LE TRIBUNAL: L'autre chose apparemment, j'ai vu une demande selon l'avis de programmation de la part de monsieur – vous demandez un ajournement, M. Rancourt?

M. RANCOURT: Oui, tout à fait. Est-ce que je peux parler à cette question-là d'abord?

LE TRIBUNAL: Mais oui, pour traiter de la demande.

M. RANCOURT: Pardon?

LE TRIBUNAL: Pour traiter de cette question, la demande.

M. RANCOURT: Oui.

Est-ce que, M. le Juge, est-ce que je devrais me mettre debout pour cette motion ou est-ce que on....

LE TRIBUNAL: Ordinairement oui, mais vu que....

M. RANCOURT: Parce que je peux avanc'....

LE TRIBUNAL: On est là – ordinairement comme on est là pour la fournir, on est aussi bien de s'asseoir. C'est à vous.

M. RANCOURT: D'accord. Alors je vais – je suis plus près de mon texte si je reste assis. Alors je vais faire ça.

5

Donc, effectivement, je vais d'abord expliquer très brièvement mon droit tel que je le comprends, mon droit procédural d'après les règles, et ensuite je vais expliquer la pertinence de vouloir passer en contre-examinatoire M. Alain Roussy.

Alors la Règle 39.02(1) dit:

La partie peut contre-interroger le déposant d'un affidavit signifié par une partie opposée relative à la motion.

10

En partie, la règle dit ça.

Et la Règle 39.02(3) précise:

15

Le droit de contre-interroger est à exercer avec diligence. Le tribunal peut refuser d'ajourner une motion ou une requête pour permettre la tenue d'un contre-interrogatoire si la partie qui demande l'ajournement n'a pas agi avec diligence.

20

Donc, M. le Juge, ça c'est ce que je comprends à propos de mon droit procédural. J'aimerais faire monter ici une feuille qui représente un tableau qui montre les événements constats dans cette action à date et ce tableau commence, par exemple, avec le dossier qui fait la demande – *the Statement of Claim* en anglais – et montre toutes les motions qui ont été soulevées soit par la plaignante soit par le défendeur et les dates, et on peut voir dans ce tableau qu'il y a eu une progression normale et échelonnée dans le temps. Ça inclut beaucoup d'examinations qui se sont déroulées normalement, etc.

25

30

Donc, je propose – je soumets que j'ai toujours agi avec une grande diligence dans toute cette action.

5

Ça c'est pour la question des règles et des droits.
Maintenant j'aimerais expliquer les raisons dans –
si c'est nécessaire, j'aimerais expliquer les raisons
dans ce cas précis où c'est important que je fais ce
contre-examinatoire.

10

Et pour ce, j'ai préparé une feuille où je donne – et
je l'ai préparée en anglais; ça va aider mes
collègues – je donne les raisons pour lesquelles je
dois examiner M. Alain Roussy.

15

Alors l'affidavit de M. Roussy m'a été présenté le
14 juin. C'est une nouvelle évidence. Et j'ai, en
droit procédural, examiné en contre-ex'....

LE TRIBUNAL: Vous n'avez pas un droit. C'est
une permission.

M. RANCOURT: D'accord.

LE TRIBUNAL: Vous avez le droit de demander la
permission. C'est pas automatique.

M. RANCOURT: D'accord.

20

Donc le 18 juin j'ai découvert une information, un
document qui suggère que M. Roussy s'est parjuré
dans son affidavit. Je peux montrer – j'ai soumis
un affidavit de réponse qui présente ce document et
je l'ai soumis à la Cour. J'ai servi des copies à mes
collègues et j'ai une autre copie ici pour vous,
M. le Juge, si vous voulez, avec des onglets qui sont
attachés – ci ça peut être utile.

25

MR. DEARDEN: He said "perjured"?

MR. DOODY: He said "perjured," yes.

30

M. RANCOURT: Et donc dans cet affidavit, si je
peux attirer votre attention à l'onglet "C" – à
l'onglet "C" j'avais écrit un courriel à M. Allan Rock
où j'avais demandé, le 28 août 2011, des questions

par rapport au financement de la plaignante dans cette action. C'était le 28 août et j'ai demandé dans ce courriel une réponse avant le 2 septembre 2011.

5 Suite à ça dans le temps, à l'onglet "B" dans le même affidavit – à l'onglet "B" dans le même affidavit, il y a un document qui a été produit par une demande d'accès à l'information et je suis venu au courant de ce document uniquement, je crois, hier ou avant-hier. Ce document – mon affidavit
10 donne des informations par rapport à l'origine de ce document, et ce document est un courriel qui vient de M. Stéphane Émard-Chabot, qui était le chef de bureau de M. Allan Rock. C'est envoyé à Allan Rock. Le sujet de ce courriel c'est David Scott et
15 puis le courriel dit, entre autres, qu'on tente de rejoindre M. David Scott et dit, entre autres:

"That being said, there is no rush to respond. In fact my view is that we do not respond at this point and prepare the time
20 to announce the role we play." [tel que lu]

Et donc c'est daté du 1^e septembre 2011.

Ça me paraît un document, étant donné que nous savons que M. David Scott est l'avocat qui a été utilisé pour répondre à ma demande du 28 août, ça
25 me paraît un document qui traite de cette affaire et ça me paraît un document qui aurait dû être produit, et qui n'a pas été produit. Et dans l'affidavit de M. Roussy, qui est à l'onglet "A" de ce même affidavit, qui est le mien, M. Roussy affirme qu'il
30 n'y a aucun document de ce type-là qui traite de l'affaire de la lettre David Scott et qui n'est pas privilégié. Il affirme ça....

MR. DOODY: Where does he say that?

M. RANCOURT: Donc....

MR. DOODY: Sorry, Your Honour, but, with respect, where does Mr. Roussy say that? My friend comes into court and, for the first time, alleges that my witness perjured himself. He's now stood up and said that the witness swore that there were no other documents. Where does he say that, Your Honour? – with the greatest of respect.

My friend obviously is of the view that he can come and make accusations of criminal behavior without giving any forewarning or foreknowledge and say whatever he feels like saying in the courtroom.

And I apologize for my outburst, but, with respect, that is inappropriate.

M. RANCOURT: Alors, pour voir que la conclusion de M. Roussy est celle que j'ai décrite brièvement, il faut lire l'affidavit de M. Roussy. Et, donc, je lis l'affidavit de M. Roussy. Il dit:

"I understand that a search was conducted in relevant locations within the University for documents described in the Notice of Examination dated April 9th, 2012 directed to Allan Rock, President of the University. That search included a search for documents described as follows:..."

Il cite ma demande:

"...David Scott letter dated October 25th, 2011, all documents about the October 25th, 2011 David Scott letter, paragraph five of your affidavit, including, and not limited to, all internal University of Ottawa communications, memos,

e-mails, letters, text messages, etc. relevant to the David Scott letter."

Ensuite, si je continue l'affidavit de M. Alain Roussy, il dit, au paragraphe trois:

"I have reviewed the documents which were discovered as a result of that search. I am advised by Mr. Peter Doody and believe that a series of e-mails between David Scott and Richard Dearden commencing October 21st have been given to..."

Là, je résume.

"...have been given to M. Rancourt."

Ensuite au paragraphe cinq:

"I have reviewed the other documents uncovered as a result of that search. All of those documents consist of either:

"a) communications originating from Borden Ladner Gervais law firm, etc., et

"b) internal communications within the University in respect of the advice provided by Borden Ladner Gervais to the University."

Et le paragraphe six:

"To the best of my knowledge, the University has at all times treated the documents described in paragraph five confidentially."

Et donc voilà le contenu précis de l'affidavit de M. Alain Roussy.

Et donc je pense qu'il y a une contradiction entre les propos de M. Alain Roussy et ce document que j'ai découvert. Et donc ça montre que....

LE TRIBUNAL: Pourquoi ça demande un ajournement?

M. RANCOURT: Oui. Donc ça c'est une autre question.

THE COURT: Yes.

M. RANCOURT: Donc ça....

LE TRIBUNAL: Tout un tas de questions. Réponds.

M. RANCOURT: Donc la raison que ça demande un ajournement – alors je poursuis tout de suite à cette réponse-là, M. le Juge – est: j'ai mis de l'autre côté de cette feuille la pertinence de la lettre David Scott. Et là j'ai expliqué la raison que c'est important. Et la raison, si je peux la résumer est comme suit:

La lettre David Scott est une lettre qui m'accuse fortement de racisme, qui est très préjudiciel, et qui fait partie, à mon sens, de la campagne de comment traiter ma demande et de – parce que vous comprenez, M. le Juge, que dans cette action, pour maintenant c'est champartie, la chose centrale pour démontrer maintenant c'est champartie, c'est le motif de la personne qui paie l'action. Et ça, je vais montrer la jurisprudence sur cette question-là.

Et moi, je veux essayer de démontrer mon but dans cette motion. C'est que je veux établir que l'Université d'Ottawa a pratiqué un – et maintenant c'est avec champartie – un degré tel que cela est vexatoire et constitue un abus de processus, en démontrant que les vrais motifs de l'Université pour financer la plaignante sont de me persécuter, de me faire du mal, et de me supprimer dans ma

participation de société. C'est l'axe de la motion – maintenant c'est champartie – que je mets devant la Cour.

Pour pouvoir démontrer ça – il est très clair que le motif est central à toute cette question, et je vais revoir brièvement les autorités qui démontrent ça par rapport à maintenant c'est de la champartie.

LE TRIBUNAL: Il n'y aura pas d'ajournement? Pourquoi....

M. RANCOURT: Donc....

LE TRIBUNAL: La pertinence de... Premièrement, est-ce qu'il est nécessaire d'interroger M. Roussy? Et pourquoi retarder cette motion?

M. RANCOURT: Donc la lettre David Scott fait partie de cette campagne que j'avance, dans laquelle...

LE TRIBUNAL: Mais....

M. RANCOURT: ...l'Université participe.

LE TRIBUNAL: Non. La question de – la lettre de M. Roussy, l'affidavit de M. Roussy, pourquoi retarder la motion?

M. RANCOURT: Il y a certaines parties de la motion, M. le Juge, qui peuvent avancer aujourd'hui qui ne sont pas impactées par ce que je pourrais découvrir en contre-examinatoire avec M. Roussy, mais il y a d'autres éléments qui peuvent être impactés et on ne peut pas le savoir d'avance parce que je veux tester le degré de connaissance de M. Roussy parce qu'il avance dans son affidavit qu'une recherche complète a été faite. Il avance dans son affidavit qu'il a....

LE TRIBUNAL: Non, non, non, non, non. Son affidavit vise le paragraphe 2 de votre demande.

M. RANCOURT: Oui.

LE TRIBUNAL: Il est très précis.

M. RANCOURT: Oui, tout à fait. Et donc par rapport à cette demande précise, il avance qu'une...

LE TRIBUNAL: Vous avez démontré une correspondance entre deux personnes qui précède la lettre de M. Scott.

M. RANCOURT: Oui. Et cette correspondance est à propos de M. Scott, c'est-à-dire à le sujet de M. Scott, et apparaît dans le temps à un moment après où j'ai demandé la question à laquelle la lettre de M. Scott répond éventuellement mais plusieurs mois plus tard.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Et donc cette correspondance montre qu'il y avait une planification par l'Université de répondre, avec l'aide de M. Scott, d'une certaine façon, et ça, ça fait partie de comment l'Université a traité ma demande et a décidé sa stratégie pour répondre à ma demande avec une lettre qui est agressivement préjudicielle et qui fait partie des motifs – les évidences que je veux démontrer – des motifs impropres qu'a pratiqué l'Université dans cette affaire.

LE TRIBUNAL: Okay, d'accord.

M. Doody? What do you have to say about the request for the adjournment?

MR. DOODY: Your Honour, in my....

THE COURT: And the allegation that he needs to cross-examine Mr. Roussy?

MR. DOODY: Your Honour, in my respectful submission, there is no need to cross-examine

Mr. Roussy and no need for an adjournment. As Your Honour noted, Mr. Roussy's affidavit speaks directly to and only to item number 2 in the Notice of Examination which was served on Mr. Rock, which is at tab "D" of Mr. Rancourt's Motion Record, and that requires Mr. Rock to bring all documents about the October 25th, 2011 David Scott letter, including all internal University of Ottawa communications. Mr. Roussy has sworn that he understands a search was conducted and he's looked at the results of the search and he's described the results of the search in paragraph 5 of his affidavit.

Mr. Rancourt says that Mr. Roussy perjured himself and he relies upon this e-mail dated September 1st, which is simply an e-mail, first, from Allan Rock, the President of the University, to Mr. Émard-Chabot, Mr. Rock's executive assistant, subject "David Scott":

"Any luck?"

to which there is a response:

"He is away. As his assistant, I've managed to reach someone else and I've just sent Mr. Scott an e-mail to his BB..."

That is, "BlackBerry."

"...asking to speak with him. Keep you posted."

There is no reference in this e-mail to the David Scott letter. It's not responsive to the request. There was no obligation to produce it.

And in any event, Mr. Roussy has not perjured himself. He hasn't even spoken to the issue. There's no description of what is contained in the documents that are spoken to in paragraph 5 of Mr. Roussy's affidavit other than what he describes it, which is sufficient to raise the claim of privilege. And so in my respectful submission, there's no need, and in fact Mr. Rancourt has shown that it would be vexatious to attempt to adjourn this to cross-examine Mr. Roussy to no purpose.

This e-mail chain between Mr. Rock and his executive assistant looks to me like they're talking about retaining Mr. Scott. We know Mr. Scott was ultimately retained because there was a letter which was sent after he was retained by the University.

So this is not to do with the letter. This is to do with retaining Mr. Scott – which is not responsive and in fact, in my respectful submission, if it had been included in the documents that Mr. Roussy reviewed, would have been privileged because it is communication about retaining counsel. And whether or not one wants to retain counsel and who one wants to retain is a matter which is privileged.

But there's no contradiction between Mr. Roussy's affidavit and that letter.

But secondly, and perhaps more importantly, there's no – the motion today is not to compel the University to conduct a further and better search than it had conducted. The University responded to this Notice of Examination in my letter which is at tab "E" of Mr. Rancourt's Motion Record, and in

that letter, at page 42 of the record, I said, in respect of this portion of the request:

"I enclose herewith the following documents:

"A series of e-mails between David Scott and Richard Dearden commencing October 24th, 2011 at 11:47 a.m. and concluding October 26th, 2011 at 1:49 p.m.

"All other documents coming within the description contained in the Notice of Examination are subject to solicitor/client privilege and will not be produced."

Mr. Rancourt cross-examined Mr. Rock. He didn't ask one question about the adequacy of the search. And in the Notice of Motion today, he is not asking for an order that the University conduct a further and better search. He is simply asking for an order requiring the University to produce documents that they objected to. And, of course, we're going to get into that.

But this is not a motion for a further and better search. So the suggestion that: a) Mr. Roussy speak to the adequacy of the search, or b) that Mr. Rancourt's affidavit served yesterday raises issues which are relevant to the issue of the adequacy of the search – is completely irrelevant to the motion before you today.

And – and – and as I said in my letter, if Your Honour is of the view that cross-examination of Mr. Roussy is necessary – and in my submission it's not – it could be that the one issue to which he speaks, which is item number 2 on the Notice of Examination, could be adjourned and dealt with in writing after the cross-examination. Alternatively,

I am prepared to submit the documents in issue to you, Your Honour, as the cases allow for your own in camera review – for determination of the privilege issue.

THE COURT: Mr. Dearden?

MR. DEARDEN: Your Honour, you will see in the hand-out that Mr. Rancourt gave you on the page that reads, "Reasons to Cross-examine Mr. Alain Roussy," paragraph 2 is the claim that on June 18th, 2012, Mr. Rancourt discovered evidence suggesting that Mr. Roussy perjured himself in his June 13th affidavit.

I am troubled, Your Honour, and I am drawing this to your attention by the affidavit that Mr. Rancourt has filed in order to ask you, please, to look at paragraphs 3, 4 and 6 of the affidavit he filed, because it would be my submission to you that what Mr. Rancourt is presenting here is the first time he discovered the e-mail cache and the response to Mr. Hickey's Access to Information Act request was this week. He wants you to be under the impression "I just found out about this stuff," and that's why none of it is in any of the affidavits that he's filed on the champerty motion. So he tells you in paragraph 3 that on June 18th Mr. Hickey advised him that he received from the University of Ottawa e-mails with subject "David Scott" as part of the response to an Access to Information Act request and advised that the said documents are available on Mr. Hickey's blog, "A Student's-Eye View." And after speaking with Mr. Hickey, he says he downloaded the documents, 250 pages, and he finds this record 348 and he says, "I was not aware of the existence of exhibit "B" prior to June 18th and then

in paragraph 6 he says, "Based on my communication with Mr. Hickey, I verily believe that exhibit "B" was disclosed by the University of Ottawa to Mr. Hickey.

Now, Your Honour, in fact, on May the 1st – May the 1st – I'm going to hand you Mr. Rancourt's blog of May the 1st on "U of O Watch" – Mr. Rancourt was totally aware of Mr. Hickey's cache of Access to Information Act documents, and you'll see that he has this. Mr. Rancourt's blog of May 1st of 2012, titled, "Inside look at the Rock administration – ATI records posted," and then I've attached the link.

So not only is he mocking President Rock by saying:

"What to do? Bribes? Empty Promises (it works during elections). U of O President, Allan Rock, June 7th, 2011, record 142" –

so that's record 142 of the Hickey *Access to Information Act* responses – okay? he publishes this and links (which is the attachment I got) – actually links to Student's-Eye View, which provides anybody with all of those documents – all of them – including the one that I submit to you Mr. Rancourt wants you to believe he wasn't aware of until now.

Well, he certainly was aware of document 142, which was a June 7, 2011 Allan Rock record, and I'm submitting to you that he's deliberately failed to inform you he knew about this stuff seven weeks ago. Seven weeks ago.

So the credibility, to what extent you want to rely, on granting this adjournment, on what

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Mr. Rancourt has written in his affidavit here, the credibility is close to zero in terms of what he's led the Court to believe in this affidavit and what in fact is the case, which is he knew about all this stuff seven weeks ago.

M. RANCOURT: Donc, je vais commencer par répondre à la plus récente suggestion, qu'il y a quelque chose qui n'est pas précis dans mon affidavit.

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D'abord, j'ai vu aucun – les documents en question sont des documents qui sont en lien à un blog qui est en lien à mon blog, et je n'ai pas regardé ni ouvert ces liens....

LE TRIBUNAL: Pourquoi pas?

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M. RANCOURT: Pardon?

LE TRIBUNAL: Pourquoi pas?

M. RANCOURT: Parce que j'avais pas ni le temps ni l'intérêt. J'avais pas de raison de penser que...

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LE TRIBUNAL: Ah, non?

M. RANCOURT: ...c'était.... C'est-à-dire que j'ai – ce que j'ai fait....

LE TRIBUNAL: Pas d'intérêt.

M. RANCOURT: Pardon?

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LE TRIBUNAL: Pas d'intérêt.

M. RANCOURT: Pas d'intérêt plus que, étant donné....

LE TRIBUNAL: Écoutez.

M. RANCOURT: Pas d'intérêt...

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LE TRIBUNAL: Écoutez.

M. RANCOURT: ...pour ce cas précis.

LE TRIBUNAL: Je vais vous sauver énormément de problèmes, M. Rancourt. Votre demande de

contre-interroger M. Roussy, votre ajournement, est refusé.

5 Tout d'abord, il y a pas de contradiction du tout dans l'affidavit de M. Roussy. Il indique très clairement, précisément, qu'il répondait à votre demande au paragraphe 2. Il a fait la recherche et le document que vous citez, c'est pas un document qui est inclus dans la référence au paragraphe 2 de votre avis au témoin. Donc, il n'y a pas de contradiction. Il n'y a pas de demande de produire des documents supplémentaires dans cette motion. Je ne vois aucun motif pour remettre, ajourner cette motion du tout. Énormément de questions dont on a pu traiter s'il y a question – s'il va arriver à 10 quelques reprises la question des documents, des motifs, nous allons en traiter, mais la question de refus, d'ajourner cette motion pour contre-interroger Me Roussy, je la refuse parce qu'il n'y a aucune contradiction telle que vous prétendez.

20 Deuxièmement, je dois souligner que votre crédibilité même est compromise lorsque vous prétendez que vous venez tout juste à la dernière minute d'apprendre ces faits lorsqu'il est évident que vous auriez pu eu la chance, au moins, de prendre 25 connaissance de ce document il y a longtemps.

M. RANCOURT: M. le Juge, permettez-moi de répondre à – à cette remise en question de ma crédibilité, s'il vous plaît.

30 Tout d'abord, la poste en question qui mettait pour la première fois ces documents en vue était le 30 avril. C'était après tous les contre-interrogatoires.

LE TRIBUNAL: On continue. On continue.
Continue. Vous avez pas la permission.

M. RANCOURT: Pardon?

LE TRIBUNAL: Demande est refusée.
L'ajournement est refusé. On continue.

M. RANCOURT: M. le Juge, je suis en train de
répondre.

LE TRIBUNAL: J'ai donné ma décision.

M. RANCOURT: Oui, j'accepte, mais...

LE TRIBUNAL: Okay.

M. RANCOURT: ...est-ce que je peux répondre à
cette question par rapport à ma crédibilité?

LE TRIBUNAL: C'est très clair.

M. RANCOURT: Non. Non, M. le Juge. Ce ne
sont que les documents tels que vous les voyez,
mais j'aimerais les expliquer, ces documents-là.

LE TRIBUNAL: Mais c'est assez pour soumettre
vous auriez pu être au courant de ces documents il
y a longtemps.

M. RANCOURT: Mais après les – tous les
interrogatoires et....

LE TRIBUNAL: Mais pas le 18 juin, comme vous
prétendez.

M. RANCOURT: Mais je n'étais pas au courant,
M. le Juge. Je n'ai pas ouvert ce grand document
avant qu'on me signale qu'il y avait quelque chose
qui se rapportait à David Scott dans ce gros paquet
de documents. Je – je n'avais pas....

LE TRIBUNAL: Mais vous voulez prétendre en
même temps que Me Roussy a menti dans son affi-
davit. C'est pas vrai du tout. Donc vous accusez les
autres de mensonges. Il est pertinent dans les cir-
constances à voir que vous-même, vous étiez au

courant – vous auriez pu être au courant de ces documents il y a longtemps.

M. RANCOURT: Je ne...

LE TRIBUNAL: En tout cas,...

M. RANCOURT: ...l'étais pas.

LE TRIBUNAL: ...l'ajournement est refusé. On continue.

M. RANCOURT: D'accord. J'aimerais....

MR. DEARDEN: Your Honour, if I may...

M. RANCOURT: J'aimerais....

MR. DEARDEN: ...at this point.... Please, Mr. Rancourt, if I may at this point....

The conduct of the defendant, Your Honour, in the libel action is unusual, in the sense that the plaintiff can use that conduct as evidence of malice and aggravated damages. This witness – or this defendant – has just told you, "I never opened the link to Mr. Hickey's captioned documents." It's blatantly false that he's telling the Court this because what I just handed you on his May 1st blog, he's referring to document 142.

Of course he opened that cache. He was looking for stuff on President Rock to embarrass him. So he found 142 and he's telling the Court he never opened up the link? That's just false.

M. RANCOURT: Mais permettez-moi de répondre, s'il vous plaît, M. Le Juge, parce que là il y a...

LE TRIBUNAL: On traite uniquement....

M. RANCOURT: ...une accusation très précise.

LE TRIBUNAL: On traite uniquement de la question de l'ajournement. Il y en aura pas. Et si vous demandez....

M. RANCOURT: J'ai compris votre décision.

LE TRIBUNAL: Et si vous demandez de contre-interroger Me Roussy, il n'y a pas lieu. Premièrement, c'est pas un droit de prouver. Lorsque c'est pertinent... Il y a pas de contradiction, à mon avis, dans l'affidavit de Me Roussy. Il avait 'pond' strictement au paragraphe 2 de votre Avis au témoin, et il n'y a pas de contradiction.

M. RANCOURT: Je comprends, M. le Juge, mais il y a une accusation qui vient d'être faite devant la Cour que j'ai ouvert – que j'ai ouvert le document et que j'ai vu le document 142. C'est absolument faux. Tout ce que c'est ça, c'est un – exactement précisément ce qui est dit dans le blog original qui était utilisé pour créer le mien. Donc j'attire l'attention à un blog qui était fait ailleurs. Je copîe, "Voyez le lien – le lien auquel je fais référence contient aussi ces mots 'record 142.'" Ça n'implique pas que j'ai vu le record. Ça c'est...

LE TRIBUNAL: Mais vous auriez pu.

M. RANCOURT: ...le lien en question.

LE TRIBUNAL: Vous auriez pu. Vous auriez pu.

M. RANCOURT: Tout est possible, M. le Juge,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...mais c'était...

LE TRIBUNAL: Vous auriez pu.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est assez, à mon avis.

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay, continuons.

M. RANCOURT: Maintenant j'aimerais demander – d'abord, j'aimerais demander dans ce cas qu'on exclue l'affidavit de M. Roussy pour les raisons suivantes.

Je n'ai pas eu le droit de tester cet affidavit.
L'affidavit contient un défaut critique parce qu'il ne
fournit pas des raisons suffisantes pour la croyance
de M. Roussy qu'une recherche a été faite qui est
adéquate, et aussi parce que ce document est
préjudiciel contre moi parce qu'il prétend que des
documents sont privilégiés et j'aimerais tester cette
possibilité-là. Aussi j'aimerais dire que si, M. le
Juge, on vous montre une sélection de documents
pour décider s'ils sont privilégiés ou pas, ça ne
répond pas du tout à la question, "Est-ce que la
recherche était adéquate?"

Donc pour ces raisons-là, j'aimerais m'opposer à cet
affidavit et demander qu'il soit exclu parce que je
n'ai pas eu le droit de le mettre en contre-
examenatoire. Donc je voulais faire cette demande
précise, et voilà.

LE TRIBUNAL: Okay.

Mr. Doody?

MR. DOODY: Your Honour, you've already ruled
with respect to Mr. Rancourt's testing it by cross-
examination, so I won't address that point.

With respect....

LE TRIBUNAL: Well, the issue is inadmissible
anyway.

MR. DOODY: With respect to the question of
Mr. Rancourt's desire to test Mr. Roussy's evidence
in respect of the adequacy of the search, I say again
the adequacy of the search is not an issue on this
motion because there is no request for a further and
better search.

And in support of that, Mr. Rancourt asked no
questions of Mr. Rock about the search, or he didn't

– didn't – he passed up an opportunity to address that, and it's not in issue in the motion.

And finally, with respect to testing the question of privilege, whether a document is privileged is a question of law which the witness would be unable to answer, whether the documents in question are adequately described in paragraph five of Mr. Roussy's affidavit. In order to test them, he would necessarily have to inquire as to the contents of them, and revealing the contents would reveal the privileged information. So that the cross-examination would serve no purpose.

M. RANCOURT: Alors, par rapport à cette question que je n'ai pas posé des questions par rapport à la recherche, je pense que c'est un peu une fausse piste parce que la question est: j'ai soumis un Notice of Examination qui faisait des demandes précises et les règles sont telles que si les documents sont pertinents, ils doivent être rendus. Et c'est donc – c'est la recherche des documents pertinents qui était demandée dans cette notice que j'essaie de creuser. Et ça c'est à côté des questions que j'ai pu demander à M. Rock pendant son contre-examinatoire, mais j'ai signalé à M. Rock pendant le contre-examinatoire que je voulais les documents qui étaient demandés dans cette notice.

Donc ça – ça, je pense que c'est un à-côté. Voilà.

LE TRIBUNAL: Okay. Demande d'exclure l'affidavit de Me Roussy est rejetée. Il n'y a pas de demande ici dans votre motion pour des documents supplémentaires et il n'y a pas eu de demande lorsque vous avez contre-interrogé M. Rock par rapport

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aux documents supplémentaires. La question de recherche, vis-à-vis l'occasion de poser la question à ce moment-là, vous ne l'avez pas fait. S'il y a lieu des questions de privilège entre le client et son avocat, ce serait à Me Roussy à me soumettre les documents et à ce moment-là j'aurais vérifié, voir que si cette demande est soutenue.

Donc on procède.

M. RANCOURT: Oui.

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Le prochain point.... Je me pose la question si je dois adresser la question des questions que je demande à être radiées dans un des interrogatoires avant de me lancer dans les refus. Alors on risque.... Bon, je pense que je vais – je vais garder ça pour plus tard. Je vais me lancer dans la question des refus donc.

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LE TRIBUNAL: Donc on commence avec les refus de qui?

M. RANCOURT: Okay.

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MR. DEARDEN: Your Honour, are we now going into the refusals charts?

THE COURT: I think he was asking himself whether or not he wants to strike answers. I'm not aware of any....

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MR. DEARDEN: He's trying.... I think he's referring to he wants to strike answers, answers to questions given to me in re-examination by Dean Feldthusen.

THE COURT: Right.

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MR. DEARDEN: But what I was going to ask in terms of how we proceed now with the 145 questions that are in issue in refusals is – can I make a

five-minute presentation to you in terms of what his Notice of Motion is requesting in the champerty motion and then give you quick references to three cases that deal with what the issues really are, as a backdrop to dealing with the refusals?

LE TRIBUNAL: Mais il faut commencer avec votre motion pour champartie.

M. RANCOURT: Oui.

LE TRIBUNAL: On le trouve où?

M. RANCOURT: Alors, je m'objecte à ce que M. Dearden fasse une présentation avant que j'avance ici. Alors vous voulez....

LE TRIBUNAL: Votre Avis de motion de champartie est à quel onglet, celui qui est en jeu?

M. RANCOURT: J'allais traiter des refus avant.

LE TRIBUNAL: Non, non, mais c'est – on ne peut pas examiner la question des refus sans prendre connaissance de l'Avis de motion de champartie.

M. RANCOURT: Oui. Alors....

LE TRIBUNAL: Et les affidavits.

M. RANCOURT: C'est dans mon Dossier...

MR. DEARDEN: We have one, Your Honour.

M. RANCOURT: Alors mon Dossier de motion. Je crois que c'est l'onglet....

MR. DEARDEN: I believe, Mr. Rancourt, if you look at tab one of the compendium I gave you this morning, your notice is there.

M. RANCOURT: D'accord. Mais je l'ai – je l'ai ici.

MR. DEARDEN: Tab 2-A, page 21 of your Record.

M. RANCOURT: J'aime référer à mes documents, M. Dearden et je....

MR. DEARDEN: Page 21.

M. RANCOURT: Alors c'est l'onglet "A" dans mon Dossier de motion.

MR. DEARDEN: Tab 2.

M. RANCOURT: M. le Juge, si vous prenez mon Dossier de motion pour la motion d'aujourd'hui, l'onglet "A" dans l'affidavit.

MR. DEARDEN: Mr. Rancourt, it's tab 2-A.

M. RANCOURT: M. Dearden, s'il vous plaît, arrêtez de m'interrompre.

Donc je me réfère à mon Dossier de motion et je vais, à l'onglet "A," et ça c'est la Notice de motion pour la motion de champartie.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Mais, M. le Juge, je veux m'objecter à ce que M. Dearden dirige comment je vais procéder dans cette motion.

LE TRIBUNAL: Mais il faut savoir, premièrement, pour connaître la question, pour traiter des refus,...

M. RANCOURT: Oui.

LE TRIBUNAL: et la pertinence.

M. RANCOURT: Et je – je....

LE TRIBUNAL: C'est encadré par l'Avis de motion et les affidavits. Donc votre Avis de motion....

M. RANCOURT: J'ai prévu la présenté de cette façon-là, M. le Juge, mais il y a un point préliminaire qui devrait être accepté avant parce que ça va impacter les refus.

LE TRIBUNAL: Mais votre affidavit à l'appui de votre motion, c'est où?

M. RANCOURT: Il n'est pas ici aujourd'hui. On ne l'a pas inclu. Il y a juste une partie qui est

incluse, un des onglets qui est inclus, et c'est dans le rapport de motion, le Dossier de motion de M. Doody. Il y a un des onglets auquel on va faire référence. Mais l'affidavit de soutien de la motion principale n'est pas ici aujourd'hui. De toute façon moi, je ne l'ai pas amené. Peut-être que M. Doody l'a amené. Je ne sais pas.

THE COURT: Mr. Rancourt's affidavit?

MR. DOODY: Your Honour, the affidavit is in the University's Motion Record and it is found at.... Sorry, there's a surfeit of documentation here.

THE COURT: Okay. Tab 4?

MR. DOODY: The University's Motion Record.

THE COURT: Four.

MR. DOODY: Tab....

THE COURT: Yes, I have it. I have it. Tab 4.

MR. DOODY: Yeah, tab 4. And – and one exhibit from it, which is at tab "N." So that's exhibit "N" to that affidavit. I did not reproduce the balance of...

THE COURT: Okay.

MR. DOODY: ...the exhibits. So the affidavit is there and exhibit "N."

THE COURT: Mm-mmm.

M. RANCOURT: Alors, M. le Juge, avant de commencer avec les refus, j'ai des documents j'aimerais distribuer à la Cour et à mes collègues. J'ai préparé un Livre d'autorités. J'ai envoyé déjà ces autorités à mes collègues par courriel, et voici les copies-papier avec des onglets.

Donc, y a ce livre des autorités auxquels je veux faire référence. Et il y a aussi – j'ai aussi préparé un livret en anglais pour mes – mes arguments oral que je vais faire. C'est donc une espèce de suivi des

arguments oral que je vais présenter par rapport aux refus. J'ai donc préparé un livret qui permet de suivre en anglais ces arguments.

Mais avant de me lancer dans les refus, il y a un – un point préliminaire que je pense qui est très important et qui impacte les refus que j'aimerais traiter d'abord, M. le Juge, et c'est la question de mon expert témoin. M. Dearden avance que mon expert témoin n'est pas admissible.

LE TRIBUNAL: Il n'est pas.

M. RANCOURT: Et donc je ne comprends pas pourquoi mon expert témoin ne – c'est pas admissible. J'ai – j'ai le formulaire 53 en question qu'il avait rempli.

LE TRIBUNAL: À quel but ce témoin est? Dans quel but?

M. RANCOURT: Ah. Donc, pour expliquer le contexte,...

LE TRIBUNAL: Pourquoi....

M. RANCOURT: ...donc, M. le Juge....

LE TRIBUNAL: Pourquoi.... Pourquoi sa preuve est nécessaire?

M. RANCOURT: Okay. Donc, sa preuve dans le contexte plus large, M. le Juge, est le suivant.

Donc, pendant l'exercice des examinations, la plaignante m'a fourni un document. Dans ce document, qui était une chaîne de courriels ou de communications électroniques, il y avait un document, une communication qui apparaissait comme étant communication directe entre l'Université, c'est-à-dire Allan Rock, et la plaignante alors qu'on prétendait qu'il y avait

aucune communication à propos du soutien financier entre ces deux parties-là, qu'il y avait une disjonction totale, alors qu'on a découvert dans cette chaîne une telle communication.

Mon expert dit que cette communication est authentique et fait partie de une chaîne électronique....

LE TRIBUNAL: La preuve n'est pas admissible. Il n'a pas fourni – c'est pas conforme à la Règle 53, qui s'applique même lorsqu'il y a une application ou une motion. La jurisprudence est très claire.

Lorsque vous prétendez mettre la preuve d'un expert devant la Cour, il y a certains éléments qui sont nécessaires; premièrement, un curriculum vitae, et il doit être en conformité avec la Règle 53.

M. RANCOURT: Je crois qu'il est en conformité précise avec la Règle 53, et j'ai le formulaire 53 qu'il m'a envoyé par FedEx récemment. J'ai amené l'original avec moi aujourd'hui que j'ai reçu hier par FedEx, ou avant-hier. Et puis aussi, si on regarde la Règle 53, ça dit qu'il doit donner son éducation, la raison de son expertise. Tous les éléments qui sont dans la Règle 53 sont présents dans son affidavit. Je n'ai pas vu dans la règle qu'il y avait une obligation à un C.V. Je crois pas que c'est dans la règle.

LE TRIBUNAL: Non, mais ça c'est la jurisprudence.

M. RANCOURT: Ça, j'étais pas au courant de cette jurisprudence-là, M. le Juge, mais tous les éléments qui sont dans la règle qui sont demandés sont dans l'affidavit de l'expert. Donc....

Et aussi j'ai amené aussi, M. le Juge, de la jurisprudence qui montre, à la page 13 de mon argument, de mon livret d'argument pour aujourd'hui – à la page 13 de mon livret d'argument pour aujourd'hui, j'ai une page qui explique pourquoi cet expert est admissible. Et, entre autres, je cite de la jurisprudence qui dit que le témoignage d'un expert ne peut pas être exclu pour des raisons techniques. Alors, par exemple, Grigoroff v. Wanasale [ph-sic]...

LE TRIBUNAL: Non, mais la question c'est la nécessité, la pertinence, de cet affidavit-là. Cet expert-là....

M. RANCOURT: Oui. Alors la nécessité donc, si on vient à la question de la nécessité, est la suivante. C'est absolument il y a devant nous une évidence que tous les propos qui ont été avancés par la plaignante qu'il y a une déconnection complète entre l'Université par rapport à et comment gérer la cause est mise en question par ce courriel qu'on a découvert.

Entre autres, ce courriel semble indiquer – et je vais argumenter ça à la motion principale – qu'il y a – on fournit de l'évidence à la plaignante pour montrer qu'elle était présente à un meeting, qui a été un meeting de décision par rapport à comment l'argent est fourni.

Donc ce courriel est essentiel à ma preuve, et la véracité de ce courriel dépend de mon expert qui affirme....

LE TRIBUNAL: L'affidavit de monsieur – de votre expert, c'est à quel onglet?

M. RANCOURT: Okay. L'affidavit de mon expert – je vais trouver – c'est à l'onglet 3 dans

mon dossier pour la motion. Alors ça va être dans le tome 2 dans le dossier pour la motion à l'onglet 3.

Et je soutiens qu'il a – que cet expert, qui est un avocat qui est certifié en Ontario, et un ingénieur qui est aussi certifié en Ontario, qu'il a mis tous les éléments qui sont demandés par la Règle 53 dans son affidavit et qui est à cet onglet 3. Donc l'expert établit que le courriel qu'on a découvert est authentique. Ce courriel qu'on a découvert est essentiel à ma preuve, est essentiel à démontrer qu'il y a, contraire à tous les propos qu'on avançait dans la théorie de cas l'autre partie, qu'il y a eu une telle communication et qu'il y en a probablement d'autres telles communications.

LE TRIBUNAL: Okay.

Your turn.

MR. DEARDEN: Your Honour, first of all, it's not just a technical objection here. In terms of not complying with Rule 53, I would say the gap rule would apply with respect to motions. It is correct that Rule 53 talks about trial expressly, but surely, in this day and age, expert testimony proffered in a summary judgment motion, in a refusals motion – which I've never seen before in my life – any kind of motion – the same principle would apply, and that's of independence and to assist the Court, not the party, like Mr. Rancourt. So if it's not a technical objection, he still has to meet the Mohan criteria, two of which is: is it relevant? and, secondly, as Your Honour asked the question, what's the necessity that you need this affidavit to assist you in determining what's in issue on the

refusals motion? And there is no necessity, in my respectful submission.

On relevance, Your Honour, let's first look at what he's talking about, Mr. Rancourt. If you turn to tab 8 of my – or is it tab 8? – no. One second. Tab 6 – tab 6 of my compendium...

M. RANCOURT: Si je peux me permettre de faire une objection?

LE TRIBUNAL: Non, non. Non.

MR. DEARDEN: Tab six of my compendium is the e-mail that Mr. Rancourt claims his expert says is authentic. How his expert can do that based on a piece of paper and not examining computers that were involved in the exchange of these e-mails is absolutely beyond me, and in fact the submission that his expert could say it's authentic is ludicrous.

What you have here, Your Honour – which is exhibit 2 to the Joanne St. Lewis cross-examination, the first two pages of it – is a printout from Joanne St. Lewis' computer and it's dealing with the April the 15th, 2011 meeting of Joanne St. Lewis, Bruce Feldthusen and President Rock where the decision was made to fund this litigation. You'll see that at the top.

You will see, Your Honour, the:

"Hi, Joanne. Can you print out a copy of this appointment for me off your computer, please?"

That's me writing Joanne St. Lewis telling her – 'cause she forwarded – what happened in here, Your Honour, is Joanne St. Lewis forwarded from her Outlook calendar, from her Microsoft Outlook

calendar, this e-mail appointment that they had to meet President Rock at 11 o'clock on April the 15th of last year. And I said: "That's not good enough 'cause if I print, it's going to have 'Richard Dearden' on the top. I need you to print out a copy of this appointment off your computer."

Here's what Microsoft Outlook does, Your Honour.... And this is not addressed by the so-called "expert" that Mr. Rancourt has put before you, and it goes to the issue of necessity. He hasn't given you any qualifications whatsoever that he knows about the functionality of Outlook calendar appointments.

What happened, Your Honour, is that when Joanne St. Lewis forwarded this appointment of Allan Rock with Bruce Feldthusen and her to occur on April the 15th, when I open it and then forward back to her, "I need you to print it out on your computer," I get added. It automatically adds me because I've responded to it. It adds me as if I'm a recipient. And you see in the middle of that page, Your Honour – and I only realized that this occurred during Mr. Rancourt's cross-examination of Joanne St. Lewis – it's got me now with Allan Rock saying to Richard Dearden and Allan Rock on March 30th of this year to attend a meeting a year ago.

Now, how ludicrous and absurd is that? It clearly proves that it's the functionality of the Outlook calendar that when you forward things in and out of the calendar, you get added.

You have none of that evidence from Mr. Beliveau [ph] before you. None of that expertise is before you.

And on the relevancy point, Your Honour – the relevancy point – so what if Allan Rock e-mailed me a calendar appointment for whatever the date is on March the 30th? The issues before you in this motion.... The issues before you in this motion is what happened at the April 15th, 2011 meeting? What happened then? What decisions were taken then? And you have the affidavits of Allan Rock, Bruce Feldthusen and Joanne St. Lewis on that point.

So it's completely irrelevant to the refusals motion – to the refusals motion – that Allan Rock e-mailed me an appointment that is for a year ago. There's no relevance to the refusals motion whatsoever. None. In my respectful submission. And that's one of the Mohan criteria.

LE TRIBUNAL: Je suis d'accord, M. Rancourt. Le rapport de M. Beauchemin est défectueux – M. Béliveau plutôt. Il n'est pas conforme à la Règle 53, donc son devoir envers la Cour et non seulement envers une partie. Il manque de crédibilité dans – de ses habiletés dans le sens qu'il ne s'adresse pas à sa connaissance de logiciels, mais surtout il ne rencontre pas les exigences de la jurisprudence, surtout l'arrêt Mohan, qui traite de la nécessité et la fiabilité de la pertinence de cet affidavit. Je ne crois pas aussi du tout nécessaire pour traiter de la question des refus.

M. RANCOURT: M. le Juge, permettez-moi de répondre. Je trouve ça incroyable...

LE TRIBUNAL: Oui.

M. RANCOURT: ...que monsieur....

LE TRIBUNAL: J'en doute....

M. RANCOURT: ...que M. Dearden puisse remplacer l'expert par son opinion de ce que ces documents veulent dire. L'expert a dit dans son affidavit de façon précise qu'il est consultant en matière d'informatique et de communication...

LE TRIBUNAL: Ce que...

M. RANCOURT: ...électronique

LE TRIBUNAL: ...M. Dearden souligne, c'est que ce que M. Béliveau manque de préciser dans son affidavit, c'est le motif sur lequel – sur quel document – sa connaissance de logiciel Microsoft, il n'en traite même pas. Mais la question, c'est que comme rapport, il n'est pas du tout fiable. Il n'est pas conforme à la Règle 53. Que non seulement question de procédure, mais non seulement ça, il n'est pas admissible selon la jurisprudence de l'arrêt Mohan dans le sens qu'il n'est pas nécessaire et n'est pas pertinent à la question des refus.

M. RANCOURT: En – en plus de ça, M. le Juge, M. Dearden pose la question....

LE TRIBUNAL: On traite à la prochaine question.

M. RANCOURT: Donc là, maintenant on avance dans les refus.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Je vais sortir mes notes.

Alors, je vais suivre mon livret d'argument oral que je viens de présenter à la Cour et à mes collègues. Je vais d'abord faire un survol ou une introduction.

Et j'aimerais dire que le motif de la personne qui soutient l'action est central à la maintenance et à la champartie.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Pour démontrer que l'Université est coupable de maintenance et de champartie à un degré tel que cela constitue un abus de processus, je désire établir que le vrai motif de l'Université pour maintenir cette action est de me persécuter, de me faire du mal, et de supprimer ma participation de société; que cette action contre le défendeur est vexatoire.

L'Avis de motion dans cette motion pour arrêter ou révoquer l'action identifie clairement les fondements de la motion comme étant la maintenance et la champartie et identifie les motifs de l'Université pour maintenir l'action comme étant une des questions de fait qui doit être déterminée.

Alors par rapport au fait que l'Avis de motion fait précisément ça, vous pouvez voir dans le livret que dans l'Avis de motion j'ai dit – donc, à la page 1 de mon livret d'argument et dans l'Avis de motion, j'ai dit:

"A need to examine the plaintiff and witnesses for this motion is necessary in order to ascertain..."

Et là au point (c) j'avais dit:

"...the maintenance and champertous characteristics or circumstances of the funding,"

Et puis au point (d):

"...the motives for entering in the funding agreement for this action."

Donc c'était très clair dans mon Avis de motion que c'était une question centrale.

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En plus, l'affidavit de soutien de janvier 2012 – on n'a pas amené avec tous ces onglets aujourd'hui mais qu'on a amené en partie – de la motion pour arrêter ou révoquer l'action identifie plusieurs faits démontrant un motif impropre et malséant de la part de l'Université pour maintenir l'action. Et là, nous pouvons aller voir précisément ça dans le Dossier de motion de M. Doody, où il y a mon affidavit à l'onglet 4, au paragraphe 40 de mon affidavit.

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Je dis:

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"Attached as exhibit "N" to my affidavit is a copy of an October 26, 2011 letter from the council, Sean McGee from our union, et plus haut, Lynn Harnden for the University..."

Et là je dis:

"...specifying many particulars in the labor arbitration about the dismissal."

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Et donc j'attire l'attention aux différentes choses qui sont contenues dans l'exhibit qui est exhibit "N" et qui est à l'onglet "N" du Dossier de motion de M. Doody. Et cet exhibit "N" est une lettre de cet avocat de mon syndicat qui a neuf points. Et ces neuf points sont mis de l'avant par l'avocat pour donner des exemples des faits relatifs à la mauvaise foi de l'Université.

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LE TRIBUNAL: Mais vous avez précisé seulement le numéro 9.

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M. RANCOURT: J'ai souligné le numéro 9 et j'ai....

LE TRIBUNAL: Mais vous avez identifié seulement le numéro 9.

M. RANCOURT: C'est vrai. Et j'ai précisé le numéro 9 par rapport à la question de l'action précise et j'ai attiré l'attention à toute la lettre et, entre autres, dans cette lettre....

LE TRIBUNAL: Mais vous vous êtes appuyé sur le paragraphe 9.

M. RANCOURT: Je m'appui sur tout ce contenu, M. le Juge, et...

LE TRIBUNAL: Non. Vous avez cité....

M. RANCOURT: ...et....

LE TRIBUNAL: Vous avez cité seulement....

M. RANCOURT: Oui, mais j'aurais pu ne pas citer aucun paragraphe.

LE TRIBUNAL: Non, non. Vous avez précisé des motifs. Vous avez identifié un seul.

M. RANCOURT: J'ai précisé que il suffisait que les motifs allaient être examinés, que les caractéristiques et les circonstances de la maintenance et de la champartie allaient être centrales, et pour qu'il y ait maintenance, on doit examiner les motifs, on doit avoir les faits par rapport aux motifs. Il ne suffit pas qu'il y ait un paiement. Maintenance implique – il faut maintenance pour avoir champartie, et maintenance implique une examination détaillée des motifs. C'est pour ça que j'ai mis, entre autres, cette liste de choses à l'onglet "N."

LE TRIBUNAL: Non, non.

M. RANCOURT: Et, entre autres,....

LE TRIBUNAL: Au paragraphe 40, vous avez précisé. Vous avez donné avis à l'Université et à Joanne St. Lewis que vous vous appuyez surtout sur le fait que l'Université payait ses frais.

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M. RANCOURT: Pour le composant champartie oui, je m'appuie sur ça. Pour le composant maintenance qui est nécessaire pour champartie....

LE TRIBUNAL: Non, non. Ils ont répondu en conséquence.

M. RANCOURT: ...il était clair que je parlais de....

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LE TRIBUNAL: Non. Il n'est pas clair du tout. Ils ont répondu en conséquence à votre Avis de motion avec des affidavits. Vous n'aimez pas. Vous voulez maintenant aller plus loin que ça.

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M. RANCOURT: Mais, M. le Juge, j'ai, pendant tout le processus des examinations. dans mes affidavits j'ai montré plein d'évidence de – de motifs impropres.

LE TRIBUNAL: Non. Mais....

M. RANCOURT: Il était clair....

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LE TRIBUNAL: Mais il faut.... Il faut – la pertinence des questions auxquelles une personne doit répondre lorsqu'il s'agit d'un interrogatoire d'un affidavit, la jurisprudence est claire. Il faut spécifier dans le cadre de l'Avis de motion et les affidavits. C'est pas un interrogatoire au préalable qui traite de la poursuite de Me St. Lewis contre vous et ça ne traite pas de votre – de la poursuite de votre part contre l'Université qui fait sujet d'un arbitrage. On parle uniquement sur l'Avis de motion, l'affidavit à l'appui, et les motifs sur lesquels vous avez donné avis aux parties adverses sur lesquels vous avez dit que la motion – la poursuite devrait être annulée ou suspendue. Vous avez précisé, non?

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M. RANCOURT: M. le Juge, je soumets qu'il y a une différence entre ce qu'on appelle en anglais

"Statement of Claim" où il faut donner les particuliers, les faits,...

LE TRIBUNAL: C'est la même chose.

M. RANCOURT: ...et – et...

LE TRIBUNAL: On parle d'une....

M. RANCOURT: ...et un Avis de motion.

LE TRIBUNAL: Mais, non, non, non. C'est encore – encore plus sévère. Là on parle d'un Avis de motion qui est très, très précis. On dit en deux, "Vous arrêter dans votre procès contre moi," et, "Je me fie sur ce point-là." Cet élément – il y a toute une correspondance, "Je me fie sur ça." Ils auraient répondu en conséquence.

M. RANCOURT: M. le Juge, c'était mon intention en écrivant cet Avis de motion de faire appel à la question des motifs de façon centrale et c'est pour ça que j'ai spécifié que dans mon examination des témoins – parce que je voulais que ces gens-là soient en témoin, pas des déposants, les témoins – j'ai spécifié:

"A need to examine the plaintiff and witnesses for this motion..."

On m'a enlevé "les témoins." On l'a remplacé par "des affiants."

"...is necessary to ascertain the maintenance and champertous characteristics and circumstances of the funding and the motives for entering in the funding agreement for this action."

J'ai spécifié que c'était mon but en faisant les examinations, c'était d'examiner ces points-là. Et en plus, j'ai mis de l'avant tous les documents que

j'ai pu qui montraient les évidences de motifs dans mes affidavits aussitôt que j'ai pu obtenir ces documents-là. Et j'ai mis devant les témoins aussi des documents pour qu'ils les identifient. Donc ce n'est pas dans le vide. Ce n'est pas ce qu'on appelle en anglais "a fishing expedition." Mais c'est – j'ai – j'ai donné tous les documents que j'ai pu et j'ai indiqué clairement et dans mon Avis de motion et dans mes questions que ce que je cherchais à connaître c'était le motif de la personne qui donnait l'argent. C'est central.

Donc ça c'est le point que je voulais faire, donc, par rapport à cette question-là.

Ces items de mauvaise foi auxquels je faisais – ou que j'ai inclu dans l'onglet "N" de mon affidavit de soutien de la part de l'Université incluent une campagne de surveillance sournoise qui est largement en dehors des normes acceptables de pratique en un lieu de travail universitaire au Canada et j'ai mis de l'avant plein de documents qui font appel à ça.

Donc mon but n'est pas du tout d'examiner le conflit de travail que je peux avoir avec l'Université d'Ottawa. Mon but est de signaler qu'il y a des évidences, qu'il y a des caractéristiques dans ce conflit qui sont telles que c'est des faits saillants par rapport aux motifs de l'Université, parce que c'est énorme ce qui a pu être fait en termes de surveillance sournoise.

Il s'agit, à travers toutes les examinations des témoins, des déposants – et ça c'est important, M. le Juge – donc, c'est la raison qu'on est là, ici en motion de refus, aujourd'hui – pendant toutes les

examinations des témoins, des déposants, les avocats pour la plaignante et pour l'Université se sont objectés et ont empêché toute question sur les faits qui ne s'intègre pas à leur théorie du cas. À chaque fois que j'ai voulu amener des faits qui adressaient directement de façon forte la question des motifs, on s'est objecté; on a dit que c'était pas pertinent. Cela a pour effet d'exclure la majorité des questions sur les considérations qui sont acceptées dans la jurisprudence pour démontrer maintenance, c'est champartie. C'est l'effet que toutes ces objections ont eu.

Et ces – et ces caractéristiques qui sont acceptées sont les suivantes, et c'est dans la jurisprudence:

- Le motif impropre du fournisseur;
- La justification ou excuse du fournisseur;
- La nature de l'entente pour maintenir;
- Les quantités impliquées (ce que M. Doody appelle le "*quantum*");
- L'intention première du porteur de litige, à savoir si le porteur de litige a l'intention d'un litige avant d'être soutenu;
- La vulnérabilité du porteur de litige, et sa relation avec le fournisseur; et puis
- L'accès à la justice pour le porteur de litige.

Toutes ces questions sont centrales à la maintenance telle qu'il est établie dans la jurisprudence.

Si on s'objecte à tous ces points-là, ça rend impossible la capacité du défendeur de prouver son cas – absolument impossible. C'est pour ça qu'il y a une motion de refus. Parce que si on s'oppose à tous

ces points-là, impossible de faire un cas. C'est dans la jurisprudence.

Alors maintenant je vais suivre un petit peu plus en détail dans mon livret d'argument oral. Par exemple – j'ai commencé à la page 4 – j'ai fait un rappel de la question, la définition de "la maintenance" telle que mise de l'avant par la Cour suprême du Canada.

La Cour suprême du Canada a défini la maintenance de la même façon de façon consistante. Je suis à la page 4, donc, de mon livret d'argument. Excusez-moi. Donc, je suis à la page 4 de mon livret d'argument. La Cour suprême du Canada a défini depuis 1907, réaffirmé en 1939, réaffirmé encore en 1993, et jamais contredit jusqu'à ce jour, que la définition de la maintenance est de façon centrale basée sur ce qu'en anglais on appelle "officious or improperly," on intervient de façon "officious or improper." C'est la définition même de la maintenance.

Et donc je cite Young v. Young, [1993] de la Cour suprême, pour établir ce point, qui cite Goodman v. The King de la Cour suprême [1939] aussi; et, de façon consistante, c'est la définition de la maintenance. C'est une condition disjonctive, c'est "officiously or improper."

Il y a la question que M. Doody a soulevée dans son dossier, qui est la question de "trafficking in litigation," qui est un concept un peu plus moderne, et je montre – j'explique au paragraphe 3 que ce "trafficking in litigation" est un concept large qui est consistant avec la définition pour la maintenance

de la Cour suprême du Canada. Entre autres, on dit dans l'autorité que je cite:

Wanton and officious intermeddling with the disputes of others in which they, the funders, have no interest and where the assistance is without justification or excuse may be a form of trafficking in litigation. [as read]

Donc il y a pas de contradiction entre ce terme plus moderne et ce qui a été mis de l'avant par la Cour suprême du Canada.

J'ai ensuite à la page 5 un survol très rapide et très court de ce qui est nécessaire pour établir un abus de processus. Donc je dis que, d'abord, c'est important, au paragraphe 4, de signaler qu'un abus de processus doit être fait basé sur toute l'évidence, l'évidence large. En anglais dans cette autorité on dit:

Abuse of the Court's process can take many forms and may include a combination of two or more strands of abuse which might not individually result in a stay. [as read]

Et ça c'est surtout important quand on parle de maintenance parce que maintenance a tous ces différents composants: l'intention de celui qui est maintenu, les motifs de celui qui maintient, etc.

Ensuite je signale qu'en Ontario, tous les arrangements champarteux sont illégaux et contraire à la politique publique parce qu'il y a un acte en Ontario qui rend inadmissible tout ce genre d'entente – et je cite au complet l'acte, à la page 5, qui est de force en Ontario et je donne deux autorités qui disent explicitement que cet acte est en vigueur en Ontario.

Ensuite je cite une autorité, Galati v. Edwards Estate qui explique que quand en plus de maintenance il y a champartie, que cela admet rarement une excuse, comme quoi ce ne serait pas un abus de processus. Alors le juge dans ce cas-là dit:

A review of the common law cases makes it clear that champerty was regarded as a species of maintenance for which the common law would rarely admit any just cause or excuse. [as read]

Et, finalement, il est clair dans la jurisprudence qu'une action qui implique la maintenance et la champartie peut être arrêtée par la Cour comme abus de processus. Et là je cite Ali v. Datta:

An action that involves maintenance or champerty may be dismissed as an abuse of process.

À la page 6, je continue mon argument pour présenter quelles sont les considérations pertinentes dans le cas de la maintenance et la champartie. Alors d'abord, le point important c'est qu'il doit y avoir maintenance pour qu'il puisse y avoir champartie. Ça c'est très bien établi et je sais que M. Doody dans son Factum est d'accord avec ce point-là. Et donc je cite des autorités à cet effet-là, qui disent très clairement: importantly, without maintenance, there can be no champerty.

Donc tous les éléments de la maintenance doivent être prouvés pour pouvoir établir la champartie.

Ensuite, le prochain point d'argument, c'est que le motif de celui qui maintient est déterminant pour établir la maintenance. Et là il y a toute une série

d'autorités qui établissent ça; par exemple,
McIntyre Estates v. Ontario. Ça dit clairement que:

...improper motive which motive may
 include, but is not limited to, "officious
 intermeddling" or "stirring up strife", that
 a person will be found to be a maintainer.

Donc ça c'est nécessaire d'après McIntyre v.
 Ontario.

Metzler, le cas que je cite, dit:

First, the involvement must be spurred by
 some improper motive.

Et puis Ali v. Datta (2011), je cite:

...the Court must carefully examine the
 conduct of the parties and the propriety of
 the motive of the alleged maintainer.

LE TRIBUNAL: M. Rancourt, je suis même
 capable – je peux lire.

M. RANCOURT: Oh.

LE TRIBUNAL: Je suis capable.

M. RANCOURT: D'accord. Je souligne des
 choses.

LE TRIBUNAL: Mais vous vous répétez. Vous
 faites la traduction de quelque chose que je suis
 bien capable de lire.

M. RANCOURT: Okay, M. le Juge. Je m'en
 excuse, M. le Juge. Je vais – je vais ne pas faire ça.

LE TRIBUNAL: Non, mais effectivement, si vous
 allez tout simplement faire la lecture en – du
 dossier, je peux la faire dans mon bureau.

M. RANCOURT: D'accord. D'accord. Donc je
 vais souligner les grandes lignes de cet argument.

Une justification ou une excuse est essentiellement requise par la personne qui maintient. Il y a de la jurisprudence qui établit ça.

5 Dans le cas des ententes avec avocats de type *contingency*, on a pu établir que ce type de maintenance est permmissible dans la mesure où ça donne un accès à la justice, et donc pas pour la raison qu'on a pu le permettre dans ce cas-là.

10 Et puis aussi il est important, quand on évalue la maintenance de considérer dans quelle mesure la maintenance est consistante avec les politiques, les actes et les règlements de l'institution en question. Et donc il y a une autorité qui démontre c'est ça.

15 Donc c'est pour ça que les questions par rapport aux politiques de l'Université sont directement pertinentes, surtout quand ces politiques-là parlent des litiges et de l'argent qui est nécessaire pour les litiges.

20 La nature de l'entente est centrale parce que la nature peut être utilisée pour montrer le motif. Donc les autorités établissent ça. the motive can be inferred from the nature of the agreement.

25 Donc il est important, dans un cas comme celui-ci, de connaître précisément la nature de l'entente au complet. Dans ce cas-ci, il y a vraiment un problème parce que c'est une entente orale qui se résumerait en un mot, "Yes," et puis où je tente de savoir plus de détails – comment les paiements ont été faits, dans quelle mesure, quelles fractions des paiements, quels sont les conditions – c'est impossible de percer la nature de cette entente-là en
30 regardant l'administration de l'argent en question.

Évidemment la quantité de cet argent est directement pertinente. C'est central à la nature de l'entente. Et donc il y a des autorités par rapport à ça.

L'intention de la personne qui est en litige avant de recevoir l'argent est centrale. Il y a des autorités par rapport à ça. Il y a la vulnérabilité de la personne en litige, si on peut l'influencer. Sa vulnérabilité est une question centrale aussi. Donc toutes les questions qui portent de ça, de sa relation avec son employeur, etc., sont pertinentes, étant donné cette jurisprudence.

Et puis je finis ma présentation orale sur les questions de loi sur les considérations qui sont pertinentes par rapport aux refus et à production, une motion comme celle-ci.

Et un des points importants, c'est que la largeur des productions dépend de la nature de la motion. Alors ça c'est important pour deux raisons dans ce cas-ci.

Je suis à la page 11 de mon résumé.

C'est important pour deux raisons.

Premièrement, une motion pour maintenance, pour démontrer maintenance, est par sa même – sa nature même nécessairement large parce que ça implique toutes ces questions de motif, etc. Donc ça veut dire que la nature de la motion dans ce cas-ci est telle qu'il faut que ça soit large.

Et deuxièmement, c'est une motion qui peut amener fin à l'action. Et une telle motion qui peut amener fin à l'action doit permettre une examination qui est un peu plus large qu'une motion qui serait

beaucoup plus restreinte. Donc ça c'est l'autorité Aghaei v. Ghods que je cite là au paragraphe 20.

LE TRIBUNAL: Paragraphe?

M. RANCOURT: Vingt de mon résumé oral – à la page 11.

MR. DEARDEN: We're on page 11.

M. RANCOURT: Les questions pour un témoin doivent se rapporter à ce qui est devant nous dans la motion. Toute chose qui sont amené de façon additionnelle mais qui ne sont pas nécessairement de façon évidente pertinente à la motion, et puis la crédibilité et de l'évidence est de ce qui met cette évidence de l'avant.

Aussi il y a une autorité au paragraphe 24, à la page 12, qui montre que il est permis de contre-examiner un déposant uniquement sur la question de – à savoir si elle est vraiment une personne indépendante – "*bias*," en anglais. Et il y a certaines questions pour un/une des déposants qui sont exactement de cette nature-là. Donc il y a une autorité qui démontre que ce type de question est permmissible.

Et au paragraphe 25, je donne des autorités qui établissent que les demandes – *the undertakings* – ...

LE TRIBUNAL: Engagements.

M. RANCOURT: Engagements – merci.

...des demandes d'engagement et des demandes pour que le témoin s'informe sont communes et naturelles. Et, par exemple, dans l'autorité Mutual Life Assurance v. Buffer, et j'ai souligné:

It is, however, common practice to ask for undertakings on such a cross-examination and to receive undertakings that the party

being cross-examined will inform himself
and pass the information on to the other
side. [as read]

5 Donc ça c'est la pratique courante d'après cette
autorité.

Et en plus, quand le déposant dépose sur informa-
tion plutôt que véritable connaissance, il est
naturel qu'on ait le droit de leur poser des ques-
tions et qu'il soit obligé de s'informer. Donc il y a
10 une autorité par rapport à ça ici au paragraphe 26.

Et finalement, M. le Juge, j'aimerais conclure cette
partie en disant que si c'était pas possible de
demander des engagements et de demander que le
témoin s'informe, ça voudrait dire que la partie
15 opposante pourrait mettre de l'avant un témoin
avec des informations restreintes ou qui ne s'est
pas informé d'avance ou – et – et de cette façon-là
empêcher les informations d'être mis de l'avant.

Donc je soutiens que ça fait une situation qui n'est
20 pas acceptable dans la façon de faire dans ces
motions.

Donc ça c'était un résumé des questions de droit.

Maintenant je suis prêt à aller question par ques-
tion, c'est-à-dire groupe de questions par groupe de
25 questions.

LE TRIBUNAL: Okay. Avant de faire ça, je pense
que je voudrais des représentations de Me Dearden
et de Me Doody quant à l'ampleur de cette motion
et la jurisprudence en particulier vous avez citée.

30 **MR. DOODY:** Your Honour, Mr. Dearden and I
discussed how we would deal with the overview of
the law, essentially what my friend – what

Mr. Rancourt has just done, and, with your permission, Mr. Dearden will commence that portion and, in order not to retread the same ground, I'll then have additional submissions – if that's acceptable to Your Honour.

LE TRIBUNAL: Okay.

MR. DEARDEN: Thank you, Your Honour. I'll be referring to my compendium.

Your Honour is well aware that relevance is determined by the matters in issue in the motion; and if I could ask you to turn to tab 1 of the compendium, which is the Notice of Motion, you will see in paragraph 1, "The motion is for..." and what he's seeking in this "champerty motion," as I'll call it in my submissions, is an order that the action be stayed or dismissed on the ground the action is vexatious or otherwise is an abuse of process. And he cites Rule 21.01(3)(d).

If you turn to paragraph 6 of the grounds, Your Honour, the grounds are that the action should be stayed or dismissed as an abuse of process because it is based on a champertous agreement as established at law.

And in paragraph 7 of the Notice of Motion, Mr. Rancourt says:

"The ground for this is: following the defendant's request, the University of Ottawa stated in an October 25, 2011 letter to the defendant that it was entirely funding the instant litigation."

He didn't cite the rest of that letter, Your Honour – which you will find at tab 4 of the compendium –

and it's found at tab 2(a) of the University of Ottawa's Motion Record, page 37. This tab 4 of the compendium is Mr. Scott's letter to Mr. Rancourt, and the third paragraph says:

"Indeed, the University of Ottawa is reimbursing Professor St. Lewis for her legal fees incurred in her defamation proceeding in the courts against you. Your defamatory remarks about Prof. St. Lewis were occasioned by work which she undertook at the request of the University and in the course of her duties and responsibilities as an employee. Her efforts were not personal but in the interests of the University. Furthermore, your outrageously racist attack upon her takes this case out of the ordinary and in the view of the University alone creates a moral obligation to provide support for her in the defence of her reputation." [as read]

Now, Your Honour, the law regarding what constitutes a champertous agreement is found in the McIntyre case, which you will find at tab 2 of the compendium. I have provided you extracts of paragraphs 26, 27 and 28 as to what constitutes a champertous agreement.

In 26 you will see the Court holds:

...maintenance is directed against those who, for an improper motive, often described as wanton or officious inter-meddling, become involved with disputes (litigation) of others in which the maintainer has no interest whatsoever and where the assistance he or she renders to one or the other parties is without justification or excuse.

And our submission, of course, Your Honour, will be that the reasons provided in David Scott's letter

was the justification for what decision was taken here.

Champerty is an egregious form of maintenance in which there is the added element that the maintainer shares in the profits of the litigation.

And:

Importantly, without maintenance, there can be no champerty.

I think we've already gone over some of this. I'll just take you to paragraph 28, the Buday decision of the Ontario Court of Appeal:

It would appear, therefore, that champerty is maintenance plus an agreement to share in the proceeds, and that while there can be maintenance without champerty, there can be no champerty without maintenance. There must be present in champerty as in maintenance an officious intermeddling, a stirring up of strife, or other improper motive.

Now, Your Honour, the law that governs whether a stay or a dismissal of an action would be seen as an abuse of process [sic] based on a champertous agreement is found in the Operation 1 case that you'll find at tab 3 of the compendium. This is a decision of Justice Cullity and I noted my friend in his legal submissions was telling you, relying on a case that I hadn't seen until today – he didn't alert us to it – the Ali & Datta case. He has only quoted to you, in paragraph 7 of his compendium – he says:

"An action that involves maintenance or champerty may be dismissed as an abuse of process."

He didn't put in there that that decision cites the Operation 1 case of Justice Cullity.

It's not as simple as that, okay?

So what did Justice Cullity hold in the Operation 1 case which was cited in this Datta case my friend – or what Mr. Rancourt relies on? If you look at paragraph 46 of the Operation 1 case, Justice Cullity had reviewed some English authorities that were not referred to at the hearing of the motions:

. . .the reasoning of Morritt L.J. supports the submission of defendant's counsel that a conclusion that the proceedings involved "trafficking in litigation" could justify a finding of abuse of process. This submission would, I believe, be consistent with the analysis of the present state of the law relating to maintenance and champerty . . .

And then we have a citation from the McIntyre case. And in paragraph 47, Justice Cullity cites the Gdanska case – I'm skipping the first few sentences of paragraph 47 – and says:

. . .where it was accepted that trafficking in litigation – that connotes "an unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation" – may constitute an abuse of process while champerty that fell short of this would not. It is implicit in this conclusion that a refusal to recognize champerty as a defence to a champertously-maintained action is not inconsistent with a finding that, in some circumstances, the action might be stayed as an abuse of process.

And indeed he did that in this case, Your Honour, for the reasons you see in paragraph 54.

So when do you have trafficking in litigation? – which is the key issue that questions should have been directed to and weren't.

Paragraph 54:

This, in my view, was not merely a case of officious intermeddling by persons who had no pre-existing interest in the right of action, it was an egregious attempt to "traffic" in litigation in the sense in which the English courts – and the Court of Appeal in McIntyre Estate – used the term. If it is not, I am unable to conceive of any reasonable meaning that could be given to the notion of trafficking unless – which, unless constrained by authority, I would not accept – it is confined to transactions that are part of a practice, or business, of buying rights to litigate. Mr. Lewis, or Mr. Lewis and Mr. Newbury, did not merely attempt to purchase a piece of the action in a literal sense – they were complete strangers to the events that gave rise to it, and to the parties involved, and having instigated, and not merely encouraged it, they seek to conduct it through the instrumentality of Operation 1 with a view to their own profit and without risk to Del Corporation – the only person or entity with a genuine interest in the subject matter of the litigation.

And, Your Honour, my last point on the backdrop here for the law that governs this motion and what questions should, or were properly refused, it's trite to say that a fishing expedition on a cross-examination on an affidavit is not proper, and I've cited you the BOT case at paragraph 7 of our Factum.

There's no fishing. Your Honour knows that.

5

Mr. Rancourt is seeking answers to 145 questions on four witnesses – on just four witnesses, 145 questions. His Motion Record, 347 pages. The refusals charts are over 80 pages. And it took me three briefcases to bring just the materials for this refusals motion to this courtroom today.

10

I submit, Your Honour, that what Mr. Rancourt is doing is fishing for evidence of bad faith to support his labor arbitration against U of O. That's why he cited paragraph 40 in his affidavit and you, quite rightly, pointed out the only item that he referred to was item number 9, when you have at tab 5 of the compendium the letter from Sean McGee to Lynn Harnden, which is found at page 57 of the University of Ottawa Motion Record.

15

And firstly, I'll note, Your Honour, I think there's a word missing in the first page, third paragraph. It says:

20

"...constitute instances demonstrating faith."

I think he left out the word "bad" in that third paragraph.

I would be correct on that, Mr. Rancourt?

25

MR. RANCOURT: I can't....

MR. DEARDEN: You left out the word "bad"?

M. RANCOURT: Moi, je ne peux pas parler pour Monsieur....

MR. DEARDEN: Okay.

M. RANCOURT: ...M. McGee.

30

MR. DEARDEN: You don't have to. Of course we wouldn't make any concession in anything we litigate with you, but I'm sure that's what Mr. McGee meant.

And number 9 is:

"Funding by the University of legal fees relating to the on-going defamation lawsuit initiated by Prof. St. Lewis against Prof. Rancourt."

That's what he's doing, Your Honour. This is an abusive motion in that he's fishing to get information on bad faith so he can use it in the labor grievance.

You do not have, Your Honour, and you didn't hear Mr. Rancourt refer to anything about the fact that Joanne St. Lewis, in my respectful submission, is egregiously defamed by his blog. You know, it's just like, "Oh, this is all about Allan Rock has some bad motive against me."

There has to be, at a minimum, in my respectful submission, Your Honour, some nexus to Joanne St. Lewis and the labor grievance that Mr. Rancourt has with the University of Ottawa. There is not a scintilla of evidence in the cross-examination, in the affidavits that have been filed, that will connect Joanne St. Lewis to anything to do with the labor grievance. There is not a scintilla of evidence that in the April 15, 2011 meeting of Allan Rock, Bruce Feldthusen and Joanne St. Lewis that there was even a mention, one word of mention, of the labor grievance with Mr. Rancourt.

M. RANCOURT: M. le Juge....

MR. DEARDEN: It was about the blog.

M. RANCOURT: Est-ce que je peux m'objecter?

MR. DEARDEN: Excuse me, Mr. Rancourt.
I'm....

M. RANCOURT: Il me semble que....

MR. DEARDEN: You'll get a reply.

LE TRIBUNAL: Okay.

M. RANCOURT: Est-ce que je peux m'objecter?

LE TRIBUNAL: Non – après.

MR. DEARDEN: So my – my submission, Your Honour, is the record will show zero involvement of Prof. St. Lewis in any labor dispute that Mr. Rancourt has, that the April 15th meeting had no mention. There's not any evidence at all in the record that the labor grievance with him was mentioned.

He can't just come to this court and say, "Oh, for my champerty motion, and for my trafficking in litigation, I have this labor dispute going on with Allan Rock, so let me fish for what I hope to find" – evidence that's going to support item number 9 in Sean McGee's letter, that funding by the University of the legal fees in this defamation action is somehow an improper motive." And therefore let him fish.

In my respectful submission, he cannot do that.

So that's the backdrop, Your Honour, to the charts that we'll eventually get into.

LE TRIBUNAL: Mr. Doody?

MR. DOODY: Your Honour, with respect to the law, which I propose to deal with first, I adopt the submissions of my friend Mr. Dearden with respect to the law in respect to champerty. And, as Mr. Rancourt noted, I have submitted to this court, as is the law, that the motivation of the person who made the decision to fund the litigation is relevant

to a determination of whether maintenance and champerty exist. But, in my respectful submission, that is not the issue before you here.

Before I go off the issue of the law with respect to champerty though, I should point out – and this is more by way of avoiding the Court being misled – I should point out, as I submit at paragraphs 35 and 36 of my Factum, that the Akon [ph] decision in the Ontario Court of Appeal does not, as my friend submits in his – sorry, as Mr. Rancourt submits in his Factum – it does not stand for the proposition that the Court of Appeal has held that an action can be stayed or dismissed.

Finally....

LE TRIBUNAL: The decision was a final decision, for the purposes of which appeal would....

M. RANCOURT: Oui. J'accepte que j'avais mal compris cette question de droit.

MR. DEARDEN: So with respect, then, to the law dealing with documents which must be produced, we start with the proposition, as I say at paragraph 37 of my Factum:

"The parties served with a Notice of Examination or a Summons to Witness must produce all documents which are relevant to any matter in issue in the proceeding that are in his possession, control or power and are not privileged."

And, of course, Master MacLeod dealt with that, the law dealing with that detail, in his decision in The Friends of Lansdowne – in one of his decisions in The Friends of Lansdowne, which I've attached at tab 10.

But it is not a *carte blanche* to wade through all of the documents which the cross-examiner is interested in seeing. And as Master Donkin held in the Glowinsky case, documents relevant only to credibility need not be produced.

And that case, Your Honour, is instructive. In a nutshell, it was a motor vehicle accident in which initially there was a claim for lost income. During the examination for discovery of the plaintiff, there was a request for tax returns to be produced – they were relevant to the question of the lost income – and an undertaking was given to produce the income tax returns. Subsequently, the claim for lost income was abandoned and the plaintiff then took the position he didn't need to produce the income tax returns because they were relevant only to the issue of lost income, which was no longer an issue.

And Master Donkin held – and this is at tab 11 of my authorities at page 2. At the bottom of the page, he writes:

It appears from the evidence of the defendants that they found certain evidence which indicates that the answers given by Mr. Glowinsky with respect to his employment, both before and after the accident, are open to question. The defendants still insist upon production of the income tax returns and in paragraph 15 of the affidavit, it's clear that counsel wish to examine the tax returns of Mr. Glowinsky for reasons of credibility.

And Master Donkin goes on to say:

5 This matter appears to raise several issues.
The first is whether the plaintiff is com-
pelled to produce the documents so that
they may be examined "for reasons of
credibility." It appears to me that this is
not a sufficient basis to order the produc-
tion of the documents. Documents should
be produced if they are relevant, and need
10 not be produced if they are not relevant. I
would therefore not order the production
of the documents solely on the basis that
they are useful for purposes of credibility.

15 He goes on to say that in this case, though, an
undertaking was given to produce them.

THE COURT: That they would produce them.

MR. DOODY: If you make an undertaking, you're
bound by the undertaking.

THE COURT: Right.

20 **MR. DOODY:** And that decision was expressly
adopted by Justice Fester – Festeryga – I'm not
sure if I'm pronouncing that...

THE COURT: Yeah.

25 **M. RANCOURT:** ...right – in his decision in
Bombardieri in 2003, which is at tab 12.

So the first caveat to one need produce all docu-
ments which are relevant is defined so as to exclude
documents which are relevant only to credibility.

30 Then, with respect to cross-examination of
witnesses on a motion, and in this – in paragraph
39 of my Factum, I cite Master MacLeod's decision
in Caputo and Imperial Tobacco which, among other

things, sets out the proposition that a witness – a deponent may be cross-examined on any fact in the affidavit which he swears and any fact in his or her knowledge which is relevant to the determination of the motion.

And Master MacLeod, relying upon a decision of Your Honour in the BASF Canada case, went on to say that you determine relevance by examining the issues raised on the motion and by reviewing the affidavits filed in support and in response. And there again, there's a caveat to that, and that is that one cannot make an otherwise irrelevant matter relevant simply by sticking it into your affidavit. And that's the – the case is at paragraph 40.

So in – and this is at paragraph 14, where Master MacLeod very succinctly sets out his summary of the rules, relying on earlier – at paragraph 17. In fact I believe this may be a reference to Your Honour's succinct summary of the rules in an earlier case, but at page 6 of 20 of the decision, at tab 13, Master MacLeod cites with approval the simplified version:

If you put it in, you admit its relevance and can be cross-examined on it – at least within the four corners of the affidavit. You can't avoid cross-examination on a relevant issue by leaving it out; you can't get the right to cross-examine on an irrelevant issue by putting it in your own affidavit; and you can be cross-examined on the truth of facts deposed or answers given but not on irrelevant issues directed solely at credibility.

So the question then, Your Honour, in my respectful submission on this motion, is: what are the relevant issues? – and they would exclude issues directed solely to credibility.

And to determine the relevant issues, you go to the Notice of Motion. Mr. Dearden has taken us through that. And you also go, in my respectful submission, to the affidavit.

Your Honour referred Mr. Rancourt to paragraph 40 of his affidavit, which is at tab 4 of my Record, page 53 of my Record, and the reference there to paragraph 9 of Mr. McGee's letter. And that letter is interesting, in my submission, to note – is a letter Mr. McGee, counsel for Mr. Rancourt's union, wrote to Mr. Harnden, counsel for the University, in the labor arbitration, and it sets out all of the things that the union and Mr. Rancourt are relying upon in that arbitration to prove bad faith. And – and there's a long list.

There's a list of nine particulars, some of which are detailed, and only the ninth is the funding of the University of the legal fees in this lawsuit, and only paragraph 9 is cited.

But things that are included in that list are, I note, number 3, barring Prof. Rancourt's access to the University premises, that there's an allegation that the University barred Mr. Rancourt from accessing the University. He's asked questions about that on this motion.

Number 4, prohibiting access to his laboratory.

Number 5, covert surveillance of Prof. Rancourt by the University by persons acting under its

authority. He's asked questions about that in these cross-examinations.

And they are clearly relevant to the labor arbitration, but Mr. Rancourt chose to not make them relevant to this.

The affidavit that Mr. Rancourt filed and the Notice of Motion that he filed said that this agreement to fund the litigation was champertous because:

- 1) The University was funding the action;
- 2) The University was using the fact of the defamation litigation in the labor arbitration.

And that's at paragraphs 42 and 43 of his affidavit. And:

- 3) The University was receiving a share in the proceeds.

And that's as set out at paragraphs 42 and 43 of his affidavit.

So those are the three things. They're funding it; they are using the defamation litigation to assist their position in the arbitration; and they're getting a share of the proceeds. So the improper motive are the last two.

Now Mr. Rancourt stands up this morning in this courtroom and says – and I have a note: "I need to establish that the main motive is to persecute me, to hurt me, and to thwart my participation in society."

That's what he now says the motivation of the University was. Very serious allegation, and a well-thought-out one, as delivered today – "to persecute

me, to hurt me and to thwart my participation in society."

5 Your Honour, you will not find that allegation in the Notice of Motion of the affidavit filed in support of this motion. What Mr. Rancourt is doing is setting up, having seen the response which the University filed – the evidence the University filed in response to the allegations he did make about the motive, he looked at them, didn't like them, and 10 has now come up with new motive, new bases for this motive being bad, in a shifting – he's shifting his ground in an attempt to find some basis to assert his claim of an improper motive.

15 To return to the law briefly, Your Honour, I note in my Factum at paragraph 42 that Rule 39.03, which is the rule under which Mr. Giroux was examined, a Summons to Witness, the authority I cite there at paragraph 42 of my Factum, the Elfe Juvenile Products case, which is at tab 15, says that:

20 The scope of allowable questions under Rule 39.03 is of more limited scope than that which would be proper on an examination for discovery. It is similar to but not completely the same as the scope of allowable questions of the cross-examination on an affidavit. [as read]

25 And in my respectful submission, that is sort of an obvious conclusion because you're not entitled to get a discovery in a motion simply by serving a Summons to Witness. 30

Mr. Rancourt, in his Factum – that's his first Factum, not the mini Factum he delivered today – relied upon Justice Perell's decision in the Rothmans case, a very important decision, and he

5 relies on that case for the proposition that witnesses who are being cross-examined on an affidavit are required to give undertakings if asked. And he repeated that assertion, relying on earlier decisions.

10 And at paragraphs 43 and 44 of my Factum, I deal with this. And I point out at paragraph 43 that in paragraphs 132 to 134, which I've quoted in my Factum at paragraph 43, Justice Perell sets out basic principles which he has distilled from the authorities and he says:

Second,...

And he's talking here about discoveries.

15 ...the Court can compel undertakings to be given on examinations for discovery . . .

because there's an obligation on the deponent, the witness on a discovery, to inform himself or herself.

20 Third, the extent to which the Court can compel undertakings to be given [by a witness] on a cross-examination is less clear. If the deponent confines his or her evidence to personal knowledge, there is no apparent basis to compel him or her . . .

to go out and obtain information.

25 But then he goes on to say:

Fourth, if a deponent does provide information based on information and belief, there would...

Appear – that should be "appear," not "appeal."

30 ...there would appear to be a basis to compel him or her to give undertakings, at least with respect to that information.

5

And I note, Your Honour, that the affidavits sworn by Mr. Rock and Ms. Delorme are both confined to information of their knowledge. They give no information on – no evidence on information and belief.

10

Now, Justice Perell does go on in the passage cited, at paragraph 44 of my Factum, to note that there is jurisprudence which holds that the deponent of an affidavit sworn for an application on a motion may be asked relevant questions that involve an undertaking. So there is a slight ambiguity in his reasons.

15

THE COURT: He held that they were premature in that case.

MR. DOODY: Yes, Your Honour.

M. RANCOURT: Excusez-moi. J'ai pas compris.

20

THE COURT: He held they were premature. He said you can't use it in examination for discovery – in a cross-examination in lieu of an examination for discovery.

25

MR. DOODY: Right. And it's interesting that the motion upon which the evidence was – that he was deciding the relevance of the questions in – was a motion in which the defendants were asserting the Court had no jurisdiction. So if they were successful, the action would have gone away. Very important motion.

I see Your Honour is looking...

30

THE COURT: Maybe we should take a break.

MR. DOODY: ...at the clock.

THE COURT: We'll come back at 2:15. Fair?

MR. DOODY: Thank you, Your Honour.

THE COURT: Staff have been going straight through. Reviens – deux heures et quart.

COURT REGISTRAR: Order, please. All rise.

L A S É A N C E E S T S U S P E N D U E (13h07)

À L A R E P R I S E : (14h18)

LE TRIBUNAL: Right. You hadn't quite finished, I don't think.

MR. DOODY: No. Thank you, Your Honour.

With respect to this point of whether undertakings are required on a witness who is being cross-examined on an affidavit, I note that in the Caputo case at paragraph 42 – and I won't take you there – Master MacLeod indicates that the issue of whether a witness ought to give an undertaking when he's merely being cross-examined is a matter of some doubt.

And the only other case on this point, Your Honour – and this is in my friend Mr. Dearden's Book of Authorities at tab 10 – is a decision in December of 2010 by Mr. Justice Colin Campbell and it's in respect of cross-examinations on a summary judgment motion. I cite this for two reasons. One is Mr. Rancourt suggested that there ought to be – undertakings ought to be required where it's a summary judgment motion. And at paragraph 12, Justice Colin Campbell wrote in this motion:

I do understand the concept of each side on summary judgment motions "putting their best feet forward," but the cross-examination process should not substitute for examinations for discovery. Cross-examinations that extend far beyond the issues raised in the affidavits have the potential for depriving the moving parties of a proportional remedy.

And then on the last page, at paragraph 21,
Justice Campbell writes:

5 To go further and require the witness to
undertake the inquiry that the question
calls for, mixes the concepts of cross-
examination on affidavits with what might
be required of a witness on an examination
for discovery. On discovery, a representa-
10 tive of the Corporation is required to
answer not only on their own knowledge
but as well on information and belief which
may go beyond personal information and
belief and include that of the corporation
itself.

15 Without knowing the entire context, the
hypothetical of what might have happened
which the witness does not know one way
or the other, does not in my view fall
within the scope of cross-examination.

20 I've taken Your Honour through what the issues
were as delineated by Mr. Rancourt in his Notice of
Motion and initial affidavit, and that was an allega-
tion that the motive was bad because the University
was sharing in the proceeds and because they
25 intended to use the litigation as a weapon in the
labor arbitration. And those two allegations which
were made by Mr. Rancourt were answered in the
evidence filed by the University.

30 And in his affidavit – and I won't read it to you –
but Mr. Rock, the president of the University,
testified – and his affidavit is in my Record – that
Prof. St. Lewis told him she had no alternative but
to sue. He testified that – Mr. Rock himself made
the decision to pay the fees in the late spring.

5 Subsequently, after the affidavit was sworn, other documents were produced which showed that the date was April 15th – made the decision to pay the fees on April 15th of 2011 at a meeting in his office with Prof. St. Lewis, Dean Feldthusen, and his chief of staff, Stéphane Émard-Chabot. Mr. Rock attached David Scott's letter and indicated that that letter expressed the reasons for which he made the decision. Mr. Rock swore that he told the Executive Committee of the Board of Governors at a meeting in October – I think it's October the 16th but not before that.

15 And with respect to the allegation that the University would be sharing in the proceeds, Mr. Rock swore that he did not know about the scholarship fund at the time that he made the decision and that that played no role in his decision to pay fees.

20 Mr. Rock was cross-examined. The transcript is before you, Your Honour. At pages 6 through 8 of my Factum, I've set out some excerpts from the transcript. Mr. Rock on more than one occasion in response to questions Mr. Rancourt put to him testified that the only reason was the following – and he said this – this is sub-paragraph (f) on page 7 of my Factum:

30 "The principle here was that the University should stand behind a member of our academic staff who has been damaged and is extremely anguished because of the defamation that was made in circumstances that arose from a task that we asked her to

take on. I am the president of an institution that, among other things, has academic staff and we have, I think, responsibilities to that academic staff. They are not all written down somewhere in a book or contained in a contract or even included in the legislative mandate of the University, and it seems to me that one of the responsibilities we have for our academic staff is that when they take on a task at our request, at the administration's request, and in the course of doing that work in good faith are defamed by somebody in an outrageously racist attack and they are grievously hurt, both professionally and personally, to the point where they are in extreme anguish and they feel that the only way of recovering their reputation and their equilibrium is to commence a civil proceeding for damages for defamation, that in those circumstances the University, as a matter of principle, ought..."

It should be "ought," not "out."

"...ought to stand with them.

"Does that relate to the statutory mandate of the University? Does it arise from some insurance policy or some written policy? No, it doesn't. But it is just as much a point of principle as anything else at the University of Ottawa, and that is the principle upon which I was acting in making this decision that is expressed very cogently in the letter sent by David Scott to you."

That is very clear evidence, Your Honour, as to why the decision was made, the motivation behind the decision.

Mr. Rancourt, faced with that evidence, is choosing to attack it. He's taking the position Mr. Rock is lying when he gave that evidence and he is attacking the credibility of that evidence.

So he is now choosing, in my respectful submission, to try and introduce into the evidentiary record before this court evidence through questions and evidence through documents that he says will go to the credibility of that statement.

And on the authority of Caputo, Glowinsky and Bombardieri, those questions need not be answered and the documents need not be produced.

With respect to the other motivation that Mister – the other bad motive that Mr. Rancourt said in his Notice of Motion and initial affidavit was the reason why the decision was made – that is so that the University could use the defamation action as a weapon in the labor arbitration – the affidavit of Céline Delorme was filed. Ms. Delorme is a lawyer with the Emond Harnden firm, and she is counsel with Mr. Harnden on the labor arbitration.

In paragraph 15 of my Factum, I've set out her evidence, and her evidence is very clear.

Paragraph 15, citing paragraph 2 of her affidavit she swore:

The University is not using Prof. St. Lewis' defamation action in the arbitration, nor is it asking the arbitrator to determine issues relating to the defamation action. The University is only asking the arbitrator to consider the content of the defendant's blog, the statements he made about Prof. St. Lewis, not the fact that he's involved in a defamation lawsuit. [as read]

She then cites the written submissions of the University, effectively the particulars upon which they'll be relying, and the portion she quotes in her affidavit is:

5 Prof. St. Lewis is a professor employed at
the University. The contents of the blog
are presently the subject of a defamation
10 proceeding commenced by Prof. St. Lewis
against Dr. Rancourt. The arbitrator will
not be asked to determine issues relating
to that proceeding. The content of the blog
will be pointed to by the University in its
submission that Dr. Rancourt's reinstate-
ment should not be considered. [as read]

15 And she goes on to say in paragraphs 3 and 4, citing
Mr. Harnden's opening statement, that that point
was reiterated. And in the top of page 10 of my
Factum, quoting from the note she made during
Mr. Harnden's submissions, Mr. Harnden says:

20 "His publication currently subject of
defamation lawsuit between St. Lewis and
R. Not asked you to decide, but will point
to you this behavior as evidence we say you
25 should rely upon as animosity with co-
workers as part of decision whether to
reinstate." [as read]

30 So the evidence is clearly the allegation of an
improper motive, that the University wanted to use
the lawsuit as a tool, a weapon in the labor arbitra-
tion, is clearly met.

So in the light of the Notice of Motion and his own
affidavit which clearly set out what the issues are

and this evidence, what does Mr. Rancourt do? He asks questions about entirely new subjects not alluded to in the Notice of Motion or the affidavit. He attempts to bring into the champerty motion all of the issues in the labor arbitration. And we'll be looking at these questions and answers and production demands, I suppose, one by one, but he asks for production of all of the correspondence between the Nelligan firm and the Emond Harnden firm with respect to his labor arbitration, wanted that all produced, with the suggestion that all of that correspondence was relevant to this champerty motion. He asked for all of the documents in the University's possession with respect to either him or Prof. St. Lewis. He asked Ms. Delorme to explain the basis for an allegation in the particulars of the labor arbitration on an issue which is completely irrelevant to the champerty motion.

In the Statement of Particulars which Ms. Delorme attached to her affidavit to show we're not relying on the lawsuit, we're relying on what was said in the blog; there was a series of other particulars. One of the particulars made reference to a vicious anti-Semitic letter which the University was saying by this notice of particulars they were going to rely upon in the labor arbitration.

So Mr. Rancourt asks Ms. Delorme how the University could link the author of this vicious, anti-Semitic letter to him and suggests that that is somehow relevant to the champerty motion.

He asks Mr. Rock about e-mails in which Mr. Rock criticizes Mr. Rancourt. He asks if there's a cap on

the funding that the University has promised for this litigation and how much has been spent.

In my respectful submission, all of these are irrelevant and we will be looking at them in detail.

If they go to anything, they go to Mr. Rock's credibility when he testified that the only reason for the decision was what Mr. Scott put in his letter and what I read out to you a short while ago; and questions that go only to credibility and are not relevant to the issues raised in the Notice of Motion are, in my respectful submission, improper.

Now, Your Honour, we're going to go into the question by question and I'm not sure exactly how we are going to do it, but at the time when it's my chance to make submissions, I do have a one-pager where I've set out a number of categories of inappropriate questions which may assist.

THE COURT: Thank you.

MR. DOODY: But I'm in Your Honour's hands.

THE COURT: Okay.

M. Rancourt?

M. RANCOURT: Merci.

Contrairement à certains de mes – contrairement à mes opposants, je ne vais pas faire d'argument par rapport à la motion principale. Je vais m'en tenir uniquement à la question des refus. Je vais tenter de faire ça.

D'après ce qu'on peut voir, d'après ce que M. Doody vient d'énoncer, il faudrait – moi, c'est la façon de comprendre – c'est qu'il faudrait que j'accepte leur théorie du cas pour décider de la question de

pertinence, chose que je pense que – elle n'est pas acceptable.

Deuxièmement, j'aimerais dire que mes questions dans cette motion ne peuvent pas être assimilées à des questions d'un examen au préalable parce que aucune de ces questions de motif sont pertinentes dans le cas principal de diffamation, aucunement pertinentes. La seule – le seul endroit où je peux examiner les motifs par rapport à payer et financer cette action, c'est dans la motion principale présente devant nous. Cela a strictement rien à faire avec l'action principale de diffamation. Il y a aucun chevauchement entre les deux par rapport à ces motifs-là. Alors je suis très clair sur cette question et tout le processus jusqu'à maintenant est clair sur cette question. Donc il y a pas de chevauchement de ce point de vue-là.

Ensuite, M. Doody a dit qu'il y avait trois éléments. Il a choisi d'interpréter mon Avis de motion pour dire qu'il y avait trois éléments, le fait que l'Université payait l'action, le fait que j'ai dit que l'action était utilisée dans le cas de mon conflit avec mon employeur, et le fait que certains argents peuvent être partagés qui viennent de cette action.

Alors ces deux derniers, M. Doody dit sans les évidences d'un motif impropre, et je suis clair qu'il y a aucun cas semblable dans tous les cas que j'ai lus où de tels faits pour un motif impropre serait suffisant. Loin de là. Tous les cas qu'on regarde où la maintenance est établie ou on essaie de montrer la maintenance, on doit regarder de façon large les actions, le conduit et les motifs de la personne qui maintient....

LE TRIBUNAL: Mais ce sont les seuls motifs vous avez précisés.

M. RANCOURT: J'ai été clair que j'allais regarder les motifs et j'étais....

LE TRIBUNAL: Non, non, mais ce sont les seuls motifs vous avez précisés.

M. RANCOURT: J'ai précisé un document qui donnait plusieurs motifs et....

LE TRIBUNAL: Non. Vous avez précisé un seul paragraphe dans ce document.

M. RANCOURT: J'ai porté attention, M. le Juge, avec tout respect, dans mon affidavit. J'ai dit – en portant attention à ce document, j'ai dit:

"...specifying many particulars in the labor arbitration about the dismissal."

Et ensuite je donne un document pour établir le composant champartie. C'est pour établir ça que j'ai cité le dernier thème.

Donc....

LE TRIBUNAL: Non, non. Mais vous avez – vous avez dit qu'il faut accepter la théorie de Me Doody quant aux catégories. Ce sont vos catégories. Ce sont les catégories que vous avez choisies.

M. RANCOURT: À mon sens, M. le Juge, j'étais clair.

LE TRIBUNAL: Non.

M. RANCOURT: C'était mon but. Et je n'ai – j'ai – à chaque fois que j'ai reçu un document qui était pertinent par rapport à ça, je l'ai donné. J'ai deux fois soumis des affidavits supplémentaires aussitôt que j'ai pu recevoir des documents pertinents. Ces documents pertinents ont été libérés de la condition de "implied undertaking."

LE TRIBUNAL: Non, mais la partie adverse...

M. RANCOURT: Je les ai soumis.

LE TRIBUNAL: ...n'a pas à deviner qu'est-ce que vous cherchez. Vous avez dit très clair dans votre Avis de motion. Vous avez précisé. Le paragraphe 9, vous avez précisé pratiquement qu'il y avait trois points, trois éléments sur lesquels vous vous appuyez. En réponse, effectivement L'Université a répondu avec des affidavits qui aient répondu exactement à ces questions-là.

Vous n'aimez pas les réponses. Vous avez fait des questions supplémentaires. Mais....

M. RANCOURT: M. le Juge, avec tout respect, quand j'ai dit dans mon Avis de motion, "The maintenance and champertous characteristics or circumstances of the funding," dans mon esprit, les opposants étaient connaissant des cas et de la jurisprudence et savaient ce que ça voulait dire, ça.

LE TRIBUNAL: Oh, non, non, non, non, non, non. Faut préciser là. Vous précisez un des....

M. RANCOURT: Champertous characteristics or circumstances.

LE TRIBUNAL: Vous n'avez rien précisé comme cela. Là j'entends pour la première fois là que vous prétendez, "They're out to get me." Je ne sais pas le paragraphe que M. Doody a cité. Il n'y a rien de ça dans votre Avis de motion, même dans votre affidavit.

M. RANCOURT: Mais il est – les évidences de motif qui sont devant nous, et que je veux découvrir en examinant les témoins, sont relatives à ça et...

LE TRIBUNAL: Mais où ça?

M. RANCOURT: Et – et ils sont assez fortes....

LE TRIBUNAL: Le paragraphe que Monsieur....

M. RANCOURT: C'est ma théorie du cas, M. le Juge. Ce n'est pas....

LE TRIBUNAL: Mais vous l'avez pas déposé cette théorie dans votre Avis de motion.

M. RANCOURT: Ben, je l'ai déposé dans le sens où je l'ai expliqué.

LE TRIBUNAL: Mais je l'apprends pour la première fois.

M. RANCOURT: Je fais de mon mieux, M. le Juge. Je présente les choses telles que je l'entends de mon mieux avec ma compréhension du système et de ce que...

LE TRIBUNAL: Mais vous donnez...

M. RANCOURT: ...les autres parties vont comprendre.

LE TRIBUNAL: ...un grand nombre de documents. Vous êtes capable de préciser dans ce volume.

M. RANCOURT: Je précise ce que – ce que je peux, et voilà. La façon que moi je comprends ce qui s'est passé, c'est que mes opposants ont choisi dès le début d'exclure toute possibilité de ce type-là par rapport au motif de malséance et il y a eu un blocage total à la moindre effort – au moindre effort que j'ai fait pour aller dans cette direction-là lors de mes questions. C'est comme ça que je l'ai vécu. C'est comme ça que j'en ai fait l'expérience.

Et si on s'en tenait simplement à la théorie du cas de M. Doody telle qu'il l'a présentée....

LE TRIBUNAL: C'est pas la théorie du cas. C'est votre théorie. C'est ça que vous avez précisé dans votre Avis de motion. C'est pas imaginé, hein?

5

M. RANCOURT: J'ai tenté de dire tout ce qui était le – d'abord j'ai dit les choses les plus pertinentes pour établir qu'il y avait le composant champartie, qu'il y avait ça. J'ai dit que je devais examiner les témoins pour établir les motifs. Je l'ai dit explicitement.

LE TRIBUNAL: Mais vous n'avez pas posé – vous n'avez rien dit que vous prétendez présentement....

10

M. RANCOURT: C'est sûr, M. le Juge, que je suis autour de....

THE COURT:

15

"This is part of a – part of a series of actions on the part of the University to prosecute, harm and suppress the defendant."

M. RANCOURT: C'est – c'est – maintenant,...

LE TRIBUNAL: Vous n'av'....

M. RANCOURT: ...mon expression aujourd'hui....

20

LE TRIBUNAL: Mais vous n'avez jamais dit ça. Vous n'avez pas dit ça fait partie d'un ensemble d'actions.

25

M. RANCOURT: Mais j'ai – j'ai développé cette théorie en faisant sortir les événements. Il y a beaucoup d'évidences qui sont sorties pendant...

LE TRIBUNAL: Non.

M. RANCOURT: ...l'arbitrage.

30

LE TRIBUNAL: On répond à un Avis de motion qui a été déposé y à quelque temps. Les défendeurs ont répondu – les part'.. – les répondants ont répondu en conséquence. Là vous voulez élaborer autre chose, mais c'est pas l'Avis de motion vous avez déposé...

M. RANCOURT: Mais je voulais...

LE TRIBUNAL: ...auquel ils ont répondu.

M. RANCOURT: ...élaborer ça dès le début. Dès le début.

LE TRIBUNAL: Non, non, non, non, non.

M. RANCOURT: Les premières questions...

LE TRIBUNAL: Où c'est – où c'est là? Moi – quelle motion? C'est dans le...

M. RANCOURT: Dans...

LE TRIBUNAL: ...l'Avis de motion?

M. RANCOURT: ...mes premières questions.

Dans ma liste – dans la liste qui est présentée dans cette lettre. À mon sens, M. le Juge, j'ai – j'ai peut-être pas été aussi clair qu'un avocat d'expérience l'aurait été en écrivant cet Avis de motion, mais j'ai fait de mon mieux. Et c'était mon but d'examiner le motif de l'Université. Ça c'est – c'est absolument mon but, d'examiner ça.

LE TRIBUNAL: Mais voilà, vous dites c'est votre intention, mais comment ce qu'ils sont – cela est deviné, votre intention?

M. RANCOURT: Mais c'était – je pense que c'est clair d'après la jurisprudence de ce qui est la maintenance, d'une part; deuxièmement, je l'ai dit dans mon Avis de motion que je voulais examiner le motif et c'était la raison pour laquelle je voulais examiner les témoins; et troisièmement...

LE TRIBUNAL: Vous avez précisé dans votre Avis de motion que l'abus – pourquoi c'était l'abus. C'était parce que l'Université devrait partager des fruits de la poursuite et qu'ils voulaient utiliser la poursuite de Me St. Lewis contre vous dans votre dispute avec l'Université. Vous l'avez précisé.

M. RANCOURT: M. le Juge, quand....

LE TRIBUNAL: Vous n'avez jamais, jamais, jamais, jamais dit en aucun temps dans votre Avis de motion, "Ça fait partie d'un ensemble d'actions de la part de l'Université contre moi."

M. RANCOURT: Cet ensemble, c'est élaboré très clairement pendant l'arbitrage qui se poursuit...

LE TRIBUNAL: Non, non.

M. RANCOURT: ...en parallèle.

LE TRIBUNAL: Dans cette motion dans l'affidavit, où ce que je trouve ça?

M. RANCOURT: C'est clair, M. le Juge. J'ai – j'ai déjà demandé la permission devant la Cour d'inclure ces nouvelles informations, et ça va être traité dans la motion principale à savoir si mon affidavit supplémentaire, deuxième affidavit supplémentaire, peut être inclus. J'en ai parlé aussitôt que j'ai pu. Tout ça....

LE TRIBUNAL: Mais dans le.... Mais là, c'est purement une question de refus de questions. Vous avez porté une motion...

M. RANCOURT: Oui.

LE TRIBUNAL: de champartie. Vous avez précisé – vous avez limité/vous avez précisé – vous n'avez jamais dit dans cet Avis de motion, et je trouve même pas dans votre affidavit, ce propos – vous faites maintenant, "The real motive for the defendant – is to persecute, harm and suppress the defendant. As such this action is vexatious." [as read]

M. RANCOURT: M. le Juge, je peux répondre? Mon dernier mot sur ce que vous me proposez est la chose suivante. Je peux répondre comme suit.

Si on prend mon Avis de motion qui est à l'onglet "A" de mon Dossier de motion....

LE TRIBUNAL: Deux-A?

M. RANCOURT: Non, l'onglet "A"...

LE TRIBUNAL: Non,...

M. RANCOURT: ...de mon Dossier....

LE TRIBUNAL: ...mais c'est 2-A.

M. RANCOURT: Pardon?

LE TRIBUNAL: Deux-A. Deux-A.

M. RANCOURT: Oui, 2-A. Je m'excuse. Il y a.... J'ai inclu le paragraphe 13, qui dit:

"Such further and other grounds as the defendant may advise."

LE TRIBUNAL: Ça c'est – ça c'est insuffisant.

M. RANCOURT: Je comprends, mais dans le contexte actuel où on parle de maintenance, je pense qu'il est raisonnable de comprendre que toute la question de motif est centrale.

LE TRIBUNAL: Oui, oui. Je comprends que vous dites ça, mais on parle de traiter des refus dans les interrogatoires, des contre-interrogatoires. Dans le corps pour une Notice de motion qui était – vous apportez, il était très restreint. Peut-être qu'a dit Me Doody, on a précisé pourquoi – vous avez prétendu que la poursuite était contre leur – ou contre champartie, et ils ont répondu en conséquence. Alors la question est: est-ce qu'ils devraient – répondu.... La portée de votre Avis de motion, c'est pas parce qu'on a – "Maintenant je pense, et j'ai des idées supplémentaires." Au moment que vous avez lancé cet Avis de motion, ils ont répondu en conséquence.

5

M. RANCOURT: Je pense, M. le Juge, que les évidences d'un motif impropre sont très significatives. Il y a des courriels qui ont été libérés. Il y a des évidences très importantes qui montrent que sans aucun doute il y a une grande série de faits qui suggèrent très fortement qu'il y a des motifs impropres qui sont en jeu ici.

LE TRIBUNAL: Qui sont?

10

M. RANCOURT: Qui sont en jeu dans....

LE TRIBUNAL: Les motifs sont? Impropres, mais ils sont quoi là?

M. RANCOURT: C'est-à-dire les – les – les motifs de mauvaise foi à mon égard.

15

LE TRIBUNAL: Mais préciser quels sont les motifs.

20

M. RANCOURT: Alors les questions, les refus dont on va parler, précisent justement celles que je cherche à obtenir, qui sont soutenues par des documents auxquels je veux faire appel pour justifier ma demande. Et ces documents-là, j'ai....

25

LE TRIBUNAL: Non, non, mais c'est – c'est une question de refus sur des réponses sur des affidavits. C'est pas une enquête. On ne vous permet pas la portée des questions – et premièrement encore de relais pour l'Avis de motion et les choses qui relèvent de cet Avis de motion et les affidavits.

30

Vous avez soulevé, vous avez signifié un Avis de motion qui prétend que la poursuite de Me St. Lewis contre vous devrait être suspendue parce qu'elle est contraire à la loi contre la champartie et je ne trouve que trois éléments dans

l'Avis de motion et dans l'affidavit: que
 l'Université paye les frais de Me St. Lewis, que
 l'Université utilise le fait de cette poursuite contre
 vous dans votre arbitrage, dans votre dispute contre
 l'Université, et que l'Université partage de revenus,
 les profits que Maître – une entente de sorte que
 Me St. Lewis va remettre dans leur – échéant à
 l'Université.

M. RANCOURT: M. le Juge, c'est très simple. Si
 on doit s'en tenir exactement à ça, en négligeant le
 fait que j'ai parlé de motifs, de caractéristiques et
 de circonstances, et si on doit s'en tenir à juste ce
 que M. Doody propose, comme vous le dites, dans
 ce cas-là, je n'ai pas de cas. Il est impossible pour
 moi, à mon avis, de démontrer que cette relation est
 maintenance; et si elle n'est pas maintenance, elle
 ne peut pas être champartieuse. Point à la ligne: si
 je ne peux pas faire appel à mon Avis de motion où
 je parle des motifs pour ça et où je parle des
 caractéristiques...

MR. DEARDEN: Your Honour, if I may....

M. RANCOURT: ...et des circonstances...

MR. DEARDEN: Excuse me, Mr. Rancourt.

M. RANCOURT: ...de maintenance et de
 champartie,...

MR. DEARDEN: Excuse me, Mr. Rancourt.

M. RANCOURT: ...dans ce cas-là...

MR. DEARDEN: Your Honour, if I may....

M. RANCOURT: Il est en train de
 m'interrompre.

LE TRIBUNAL: Okay.

M. RANCOURT: Si je ne peux pas faire appel à
 ces motifs, il est impossible. Et ça, je le sais depuis

le début, parce qu'il suffit de lire la première jurisprudence pour savoir clairement que motif est la chose centrale, un point et c'est tout. Ça doit être un motif impropre et – et sans excuse, et dans quelque cas, c'est même contraire au politique de l'institution où – où c'est en marche.

LE TRIBUNAL: Mais vous n'avez pas....

M. RANCOURT: Ces questions-là....

LE TRIBUNAL: Aucune mention de ça dans votre Avis de motion.

M. RANCOURT: Ça vient dans le motif.

LE TRIBUNAL: Non.

M. RANCOURT: Tout ça est dans motif.

LE TRIBUNAL: Non, non. On peut pas dire un mot générique comme "motif" puis vous poser, "Oh, les autres entendre par ça" toutes les possibilités qui peuvent découler de ce mot-là.

M. RANCOURT: Ces mêmes possibilités sont discutées dans presque tous les cas de maintenance qui sont dans la jurisprudence.

LE TRIBUNAL: Ça prend plus que ça. Ça prend beaucoup plus que ça. Faut préciser les motifs. Vous avez précisé....

M. RANCOURT: Voilà la situation, M. le Juge. Si – si je ne peux pas faire appel aux motifs en posant des questions, alors que j'ai dit que je voulais appeler ces témoins-là pour faire appel aux motifs, je n'ai pas de cas. C'est.... On vient de fermer la porte.

LE TRIBUNAL: je peux vous dire que, en considérant, moi, on dit – on traite ici uniquement des questions des refus...

M. RANCOURT: Oui.

5 **LE TRIBUNAL:** ...questions.... Moi, je vous dis
que la portée des questions des interrogatoires est
déterminée, est limitée par les motifs que vous avez
précisés dans votre Avis de motion et dans votre
affidavit. Il n'était pas – il n'y avait pas question à
l'Université ou à Me St. Lewis à deviner quelle sorte
de motif vous auriez pu croire, quels que soient vos
théories. C'était à vous de les énoncer clairement.
10 Vous avez pu le faire aujourd'hui, mais apparemment pour la première fois, qu'il y a toute une série
d'actions de poursuite et qui ont motivé cette
vision. Il paraît, quand je regarde les questions,
c'est ça que vous cherchez, des preuves additionnelles pour voir s'il y a des possibilités de motif,
15 ou, par contre, vous ne croyez pas les réponses qu'ils vous ont données.

20 **M. RANCOURT:** Non, M. le Juge. On peut regarder les questions rapidement une à une là, mais dans la plupart des questions, ce n'est pas ce que je fais. Dans la plupart des questions, je présente un document que j'ai pu obtenir récemment et je dis, "Pouvez-vous identifier ce document?" On refuse de l'identifier parce qu'on dit, "Ce n'est pas pertinent." Et donc.... J'ai – j'ai
25 déjà beaucoup d'éléments de preuve qui sont là, qui sont présents. On refuse de les identifier. On refuse de répondre à aucune question à propos de ces documents. La majorité des questions, ou une grande partie des questions, sont de ce type-là.

30 **LE TRIBUNAL:** Mais en tout cas, je vous indique la pertinence, comme je viens de vous le dire, est restreinte à ces trois éléments.

5

M. RANCOURT: Je veux simplement dire sur le procès-verbal que je m'objecte parce que c'est précisément la position de mon adversaire alors que j'ai parlé des motifs, des circonstances et des caractéristiques de cette...

LE TRIBUNAL: Mais c'était.... C'était...

M. RANCOURT: ...cette maintenance.

LE TRIBUNAL: ...à vous de préciser – préciser.

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M. RANCOURT: J'aimerais aussi signaler, M. le Juge, que je suis auto-représenté et que cette – l'idée de la – à quel point il faut préciser dans chaque détail et là où on doit mettre la ligne versus dans le train des questions qu'est-ce qu'on peut concevoir comme étant pertinent, c'est des choses – c'est toute des choses que je fais pour la première fois dans ma vie. Il y a aussi cette question-là, M. le Juge.

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MR. DEARDEN: Your Honour, I want to put on the record an objection to Mr. Rancourt playing again the self-represented party.

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Mr. Rancourt is getting legal advice from it-looks-like several areas. He's told us that he sought legal advice in the libel action. His Factums are better than a lot of Factums that are filed in motions in this courthouse. And it's just unfair of him to be representing to the Court that he's self-represented.

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The only time he's self-represented is when he argues. And then he argues and argues and argues and argues no matter what you say to him. And that was the first time I was getting up to object, is that he said it at least three times, and he keeps on arguing with you.

And I hope that he knows that there's limited time left in his refusals motion and Mr. Doody and I are entitled to half of that. And if he wants to waste it on keep'.. – running at the wall about not liking what he's been told was in his Notice of Motion, and then desperately play, "I'm the self-rep," that's his problem, in my respectful submission.

THE COURT: No.

M. RANCOURT: M. le Juge, je n'ai pas eu...

MR. RENAUD: [interpreter] Your Honour....

M. RANCOURT: ...d'aide d'un avocat dans cette – dans cette motion.

LE TRIBUNAL: Okay. Donc on procède, donc, aux refus.

M. RANCOURT: Oui.

MR. RENAUD: [interpreter] Your Honour, the interpreters hesitate to intervene, but with the louder AC this afternoon, we're having difficulty hearing the Court.

THE COURT: Okay.

MR. RENAUD: If you could just....

THE COURT: Do I need to bring this....

MR. RENAUD: Or just speak a little louder.

THE COURT: All right. Is this better? Is that better? Okay, is it on?

MR. DOODY: First time I've seen the judge be asked to speak up. It's usually witnesses.

THE COURT: No, I get.... No, I am soft-spoken, generally speaking. Is this on?

M. RANCOURT: Alors, M. le Juge....

COURT REPORTER: It's working.

THE COURT: It's working? Okay.

M. RANCOURT: M. le Juge, je pense que ça va aller rapidement parce que...

THE COURT: Right.

M. RANCOURT: ...vous avez déjà délimité en grande partie...

THE COURT: Mm-mmm.

M. RANCOURT: ...comment on va voir la question de pertinence.

LE TRIBUNAL: Okay. Donc...

M. RANCOURT: Alors je vais commencer – je vais utiliser mes tableaux de "refusals and undertakings." Donc...

LE TRIBUNAL: Oui.

M. RANCOURT: Et je vais les faire rapidement dans l'ordre dans lequel...

LE TRIBUNAL: L'onglet 4?

M. RANCOURT: ...dans l'ordre dans lequel j'ai examiné les témoins.

Et donc le premier est au tableau – est à l'onglet 4 de mon Dossier de motion, et c'est les refus par rapport à M. Robert Giroux.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Donc si on est à l'onglet 4, je vais – la première question – le premier refus se rattache à toute la question du Summons to Witness. Donc je vais garder ça pour la fin, mais je vais commencer plutôt avec le deuxième point.

Alors dans ce deuxième point, je demande qu'elles sont les politiques, les directives, les procédures pour mettre en jeu de l'argent pour un procès légal d'un employé de l'Université. C'est une question directement pertinente relative à tout ce genre de

choses dans une institution et il y a un refus dans le sens que ce n'est pas pertinent.

J'ai déjà donné au paragraphe 13 de mon résumé d'argument....

MR. DOODY: Your Honour.... Your Honour, this is the first one that Mr. Rancourt is dealing with, and, as I indicated in my copy of his chart in which I corrected his mistakes, this question which Mr. Rancourt just read to you is in the chart of Mr. Giroux' questions at tab "C" of my Factum and on page 6 of that chart. As I indicated, Your Honour, the italicized typing in my chart is my additions. The un-italicized typing is verbatim copied from what Mr. Rancourt put in his chart.

So he just told you that there was a refusal to advise if there was a policy about funding legal costs of an employee being sued. In fact, as indicated by what's in the italicized portion, Mr. Giroux' answer was:

"There is no policy that covers this situation."

Sorry – that was in the – that's the answer recorded in the transcript.

And then he asks the same thing on the next page of my chart, page 7, and the answer given was again:

"I am not aware of such a provision."

So Mr. Rancourt – two things: there was no refusal, and Mr. Rancourt is misleading the Court when he says that there was.

M. RANCOURT: M. le Juge, quand – quand on est en contre-examinatoire, ce qu'on a droit de faire avec un témoin d'après les règles, on peut

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questionner la réponse qui vient d'être donnée. On peut – et une façon de questionner la réponse qui vient d'être donnée, c'est de la reposer d'une autre façon. C'est ce que j'ai fait. Et la deuxième réponse était, "Je ne sais pas." Alors en premier, on donne une réponse; ensuite, on dit, "Je ne sais pas"; et ensuite l'avocat dans sa lettre dit, "De toute façon, c'est pas pertinent."

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C'est dans ce sens-là que je veux avoir le droit d'aller au fond de cette question-là. C'est tout.

LE TRIBUNAL: Okay.

MR. DOODY: I didn't say it wasn't pertinent.

LE TRIBUNAL: C'est pas pertinent.

MR. DOODY: Sorry.

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LE TRIBUNAL: C'est pas pertinent. Ben, de l'avoir – c'est pas pertinent, mais il a répondu.

M. RANCOURT: Pardon?

LE TRIBUNAL: Une réponse – il y a eu une réponse à la question 11.

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M. RANCOURT: Onze?

LE TRIBUNAL: Numéro 5. Il y a eu une réponse qu'il y avait pas de politique.

M. RANCOURT: Oui. Et donc si on passe au 3.

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LE TRIBUNAL: Ça se parle d'une – d'assurance, question différente. Il répond, "Je ne sais pas."

M. RANCOURT: Attendez. Ça c'est un groupe de questions.

LE TRIBUNAL: La question différente.

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M. RANCOURT: Oui. Si on passe.... Oui. Donc, la question 2 était par rapport à si l'employé est poursuivi.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Et la question 3 est si l'employé veut poursuivre quelqu'un.

LE TRIBUNAL: Non.

M. RANCOURT: Et par rapport à cette question 3, il y a eu un refus de s'informer s'il y avait une telle politique. D'accord?

LE TRIBUNAL: Ça c'est – numéro 3, vous dites....

M. RANCOURT: C'est-à-dire si les questions 13 à 22 qui sont aux pages 6 à 8 que j'ai résumé en disant:

"Est-ce qu'il y a une telle politique?"

Et puis il y a un refus.

LE TRIBUNAL: Selon la charte de Me Doody, il indique que – que M. Giroux avait répondu. Vous avez demandé un engagement.

M. RANCOURT: Je ne suis plus. Je m'excuse.

LE TRIBUNAL: Il faut voir la réponse dans la – dans la carte de – la charte de Me Doody. On peut aller voir la transcription, mais il paraît que la question a été répondue, et vous avez demandé un engagement qui était refusé.

M. RANCOURT: C'est-à-dire qu'il y a – il y a deux questions qui peuvent être répétées qui sont en morceaux. La première c'est:

"Est-ce qu'il y a une politique qui permet de payer quand un employé est poursuivi?"

Et la deuxième, c'est:

"Est-ce qu'il y a une politique quand un employé veut poursuivre quelqu'un?"

Donc pour la deuxième, je pense qu'il y a eu un refus et que c'est:

"Ce n'est pas pertinent."

Par exemple, les questions précises – oh, j'ai pas mis des questions précises. Mais la question est, "Est-ce que c'est pertinent ou pas, ces questions-là?" Je pense que oui.

LE TRIBUNAL: Il a répondu,

"I'm not aware."

Il était pas connaissant d'une telle politique.

M. RANCOURT: Donc si le chef du Bureau des gouverneurs peut pas me dire s'il y a une telle politique, comment puis-je obtenir cette information-là?

LE TRIBUNAL: Vous avez demandé un engagement.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça, la question – c'est pas un refus. C'est – c'est – vous avez demandé un engagement.

M. RANCOURT: Oui. Ensuite....

LE TRIBUNAL: Non, non. Mais il faut – écarter de la question. Pis Me Doody – c'est qu'un témoin tel que M. Giroux, qui est un témoin, simplement un témoin chez une motion. L'Avis de motion passait sur cette question-là, n'a pas demandé qu'il apporte des polices ou s'informer, quoi que ce soit.

M. RANCOURT: Mais, M. le Juge, j'ai spécifiquement demandé que ces politiques – ces polices-là, qu'elles soient fournies dans mon Summons to Witness. J'ai spécifiquement demandé tous ces politiques-là.

LE TRIBUNAL: Où ça?

M. RANCOURT: Alors, il faut aller au Summons to Witness et...

LE TRIBUNAL: À M. Giroux?

M. RANCOURT: Oui, si je me trompe pas. Je me trompe peut-être entre M. Allan Rock et M. Giroux. Excusez-moi une seconde. Je veux aller – alors c'est l'onglet "B" et "C," je crois, de mon Dossier de motion.

LE TRIBUNAL: Il vous a répondu qu'il y a pas de police. La réponse 2 juin? Est-ce qu'il a répondu?

M. RANCOURT: Voilà. Donc je suis à l'onglet "B. "

LE TRIBUNAL: Deux-B?

M. RANCOURT: Deux-B, oui, de mon Dossier de motion. Et c'est le Summons to Witness. Et ça demande, au paragraphe 2,

"tous les politiques, directives, etc., qui seraient rattachées à toute cette question-là, de est-ce que les employés ont droit de l'argent pour payer leurs frais légaux"...

LE TRIBUNAL: Okay.

M. RANCOURT: ...dans les deux sens.

Et ensuite spécifiquement, au paragraphe 3 je demande par rapport à une police d'assurance précise qui s'appelle CURIE... Je pense que c'est – "CURIE" c'est un acronyme, "Co-operative University..." quelque chose. C'est une politique d'assurance pour ce genre de chose. ...j'aimerais avoir la politique courante qui parle spécifiquement de payer pour des frais...

LE TRIBUNAL: On parle...

M. RANCOURT: ...d'avocats.

LE TRIBUNAL: ...de les questions 13-22 - à la page 6, votre numéro 3?

M. RANCOURT: Où est-ce qu'on est là? On est dans le procès-verbal de l'examination.

LE TRIBUNAL: Non, mais votre question, votre refus, ce que vous appelez question numéro 3. Okay? Votre charte à la page 318 à votre cahier de - pour cette motion.

M. RANCOURT: Mm-mmm.

LE TRIBUNAL: Vous avez identifié les questions 13 à 22, pages 6 à 8:

"University policy, procedure or directive for funding employee wanting to sue a third party in a private lawsuit."

Vous avez indiqué:

"Plaintiff refuses to inform himself."

M. RANCOURT: Oui.

LE TRIBUNAL: Me Doody a répété que M. Giroux indiquait:

"I'm not aware."

"Could you please find out? Could you undertake to find out, please?"

"No."

"You're answering for the witness, Mr. Doody?"

"You asked for an undertaking. Mr. Giroux will not be giving undertakings. I'm his lawyer. That is my role here. You asked for an undertaking. It is my role in this examination to provide that answer and not the witness's."

"Mr. Giroux, could you find out if there are any such policies or procedures or directives relating to this?"

"Don't answer. The answer is 'No.'"

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Donc il a refusé.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est la question.

M. RANCOURT: D'accord.

LE TRIBUNAL: Pis là, la réponse, Me Doody:

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"A witness being examined on a motion is not required to give undertakings. He is akin to a witness at trial, who is not required to give undertakings. In any event, the Summons to Witness asked for such policy in item 2 set out above.

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Mr. Rancourt was advised in the letter from the University's lawyer, attached as exhibit 'C' to Mr. Rancourt's affidavit of June 12 that there is no such policy.

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Mr. Rock testified that he was not aware of such a policy. Nothing is to be gained by having Mr. Giroux asked the same question again and passing on the same answer."

Donc, vous avez leur réponse.

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M. RANCOURT: Mais je pense que j'ai le droit d'interroger mes témoins et d'avoir – de poser la même question à différents témoins, même si un a déjà répondu. C'est tout.

LE TRIBUNAL: Okay, bon. La question est répondue.

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M. RANCOURT: J'ai posé la question à savoir quel était le budget pour les frais légaux à l'Université, quel était la quantité du budget spécifiquement. On a dit que c'était pas pertinent.

Ça parle du motif, à mon sens. Si on est en train d'utiliser plus que le budget habituel, ça montre un grand désir de faire cette chose. C'est donc relié aux motifs.

5 **THE COURT:** Mr. Doody, on the budget?

M. RANCOURT: Dans le....

Est-ce qu'on va faire chaque question une à une...

LE TRIBUNAL: Oui, oui.

M. RANCOURT: ...comme ça?

10 **LE TRIBUNAL:** Oui, oui.

M. RANCOURT: Oui?

LE TRIBUNAL: C'est la façon de procéder. We're going to go one by one.

MR. DOODY: Your Honour, the question was:

15 "What would typically be the annual legal budget of the University for outside counsel services?"

In my respectful submission, that can be of no relevance. What the University budget is in a typical year, I have no idea how that could be relevant to their motivation in this particular case.

20 **LE TRIBUNAL:** Je suis d'accord. C'est pas pertinent.

25 **M. RANCOURT:** Si on passe d'ici à numéro 5. Il a été démontré dans l'examination que le témoin n'a pas cherché ses propres courriels pour répondre aux demandes dans le Summons to Witness. Et donc je demande que le témoin cherche ses propres courriels pour tout courriel qui pourrait être pertinent à cette motion.

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En gros, c'est comme ça qu'on peut résumer toute cette série de questions. Il a été clairement établi

que M. Giroux n'a pas cherché les documents qui étaient dans son contrôle, dans sa possession, pour – pour voir s'il y avait des documents qui étaient pertinents à cette motion.

THE COURT: Okay. Mr. Doody? This has to do with the Summons to Witness.

MR. DOODY: No, Your Honour. The question was, to Mr. Giroux:

"How did you learn about the meeting in October, when Mr. Rock told you about the decision he'd made in April?"

And the evidence is – and I put it in my chart at page 12 – the question:

"Okay. You're refusing to look for e-mails that are under your possession and control that relate directly to this matter. Is that correct?"

So the request was to have him look in his own e-mail system for any e-mails between him and the Vice-president, Governance, Ms. Davidson, about the meeting that was going to take place in October, when he was told of the decision. That wasn't the meeting where it was made. And Mr. Giroux' answer was:

"Yes. I'm refusing to look in my own e-mails because I don't think it was an e-mail. It was probably a telephone conversation."

So the answer of the University is that the request – a) the evidence was it was probably a telephone conversation; and b) it's a request to give an undertaking and then undoubtedly would come back and

answer questions; and that was not sought in the Summons to Witness.

M. RANCOURT: Je soumets que il a été découvert pendant cette examination que le témoin n'a pas cherché ses propres courriels. Donc je demande que le témoin cherche ses propres courriels pour tout document qui serait pertinent à cette motion.

THE COURT: Okay. So he wants the witness to look for e-mails that are relevant to this motion. And your answer to that?

MR. DOODY: a) The witness is not required to give undertakings. b) It's far too broad of a question. c) That wasn't what he asked him.

Under the cross-examination, he asked for – to search for communications, e-mail communications, for the period between April and October 2011 about the meeting that took place in October.

M. RANCOURT: Le témoin avait une responsabilité de répondre au Summons to Witness, qui est très sérieuse, et n'a même pas recherché les documents dans son contrôle, dans son adresse de courriel, pour voir s'il y avait pas des communications ou des documents attachés qui pouvaient être pertinents à cette motion.

LE TRIBUNAL: Okay.

M. RANCOURT: Et donc je demande que le témoin fasse cela.

LE TRIBUNAL: La demande pour tous les documents n'était pas si précise. Un témoin n'est pas – dans les circonstances de M. Giroux – n'est pas tenu à faire des engagements; et lorsque la pertinence de la question – elle a pu être précisée en vue des communications d'une période précise. Elle a

été répondue, qu'il a eu une communication par téléphone.

Donc, il n'y a aucune obligation de la part de M. Giroux d'aller fouiller dans ses courriels.

5 **M. RANCOURT:** Le numéro 6 est rattaché au numéro 5 dans le sens que M. Doody avait contemplé la possibilité que l'Université ferait une recherche pour les courriels en question, puisque c'était des échanges entre M. Giroux et l'Université. J'imagine que la réponse va être la même, mais je' fais la demande.

10 **LE TRIBUNAL:** On parle....

15 **M. RANCOURT:** Donc ça aurait été des courriels d'échange entre Diane Davidson à l'Université d'Ottawa, qui est la Vice-présidente pour la gouvernance, et Mr. Giroux, qui est le Chef du Bureau des gouverneurs, qui se reliaient à ce meeting où la décision a été prise – donc qui seraient, d'après moi, directement pertinents à la motion. Et donc je demande que l'Université fasse une recherche entre avril 2011 et octobre 2011 pour de tels courriels.

20 **MR. DOODY:** Your Honour, the same response as the previous one, with one twist. In fact I did search – I did have a search conducted of
25 Ms. Davidson's e-mail records for the two-week period prior to the October 11 meeting to see if there were any e-mails between her and Mr. Giroux in that time period and no such e-mails were
30 located and Mr. Rancourt's been advised of that. With respect to the balance, my submissions are the same as with respect to the earlier request.

LE TRIBUNAL: Non, c'est – ça c'est vraiment la – ce qu'on dit en anglais "fishing expedition."

M. RANCOURT: Le point 7, M. le Juge, c'est pour obtenir l'agenda du meeting de l'exécutif du Bureau des gouverneurs qui permettrait de savoir qui était présent à ce meeting-là. C'est une information qui serait très facile à obtenir et à me fournir. Donc je la demande.

THE COURT: Okay. Mr. Doody?

MR. DOODY: Your answer.... Sorry. Your Honour, the witness gave evidence as to who – who he could recall was at the meeting. There then was a request for an undertaking to search the records to find out who else was there and the response was that the witness is not required to give undertakings. In addition, I would submit that it's not relevant to the issues.

LE TRIBUNAL: Comment c'est pertinent?

M. RANCOURT: C'est pertinent parce que c'est le corps décisionnel le plus élevé qui a eu l'occasion de se prononcer sur cette – ce financement de cette action et donc savoir qui était présent, qui a pu avoir une influence, ça me semble tout à fait pertinent.

LE TRIBUNAL: Okay. C'est pas pertinent. Not relevant.

"Witness's reaction and position regarding University sharing in the proceeds of the action"?

M. RANCOURT: Alors pour expliquer cet item, M. le Juge, le Chef du Bureau des gouverneurs a appris pour la première fois pendant l'examination

ue l'Université pourrait recevoir une part des
bénéfices de cette action. Il n'était pas au courant
– on ne l'avait pas mis au courant. Et donc il a été
un peu, je dirais, surpris. Et donc je lui ai demandé
quelle est cette réaction, à apprendre cette – cette
chose-là, et:

"Est-ce que vous croyez qu'il y a un conflit
avec les politiques, par exemple, de
l'Université, etc.?"

Dans des termes larges, j'ai posé ce genre des ques-
tions. Et on a refusé. Il dit que c'était pas
pertinent.

LE TRIBUNAL: Et pourquoi c'est pertinent?

M. RANCOURT: C'est pertinent parce que si
cette situation est contraire aux politiques, ça parle
directement d'un motif impropre.

LE TRIBUNAL: Il a déjà répondu qu'il n'y a pas
de politique.

M. RANCOURT: C'est-à-dire que il a répondu
pour les politiques de financement, mais il a pas
répondu par rapport à la possibilité qu'on pourrait
avoir ce qu'on peut appeler dans le langage commun
"une ristourne." Donc il a été – il a été....

LE TRIBUNAL: Mais la réaction de M. Giroux,
c'est pertinent à quoi?

M. RANCOURT: Oui, parce que M. Giroux
représente l'institution. Mr. Giroux représente
l'autorité, le bien-porté de l'institution; et donc, ça
me semble directement pertinent.

LE TRIBUNAL: Okay. C'est pas pertinent.

"Expected costs of litigation"

Comment c'est pertinent?

5 **M. RANCOURT:** C'est pertinent parce que c'est un des attributs fondamental de la nature de l'entente. C'est-à-dire combien ça peut coûter est un élément dans une entente. Le côté argent est central toujours et c'est certainement le cas dans ce genre d'entente. Donc de savoir la pensée d'une institution et des barrières qu'ils ont pu mettre par rapport aux dépenses, des contrôles qu'ils peuvent y avoir en place, tout ça se rattache à la quantité d'argent qui est mis en jeu, et donc c'est pertinent.

10 **LE TRIBUNAL:** Okay.

Mr. Doody?

15 **MR. DOODY:** In my respectful submission, it's not relevant and in fact it has the potential to make mischief. Mr. Rancourt is attempting to find out what the University thinks this might cost, and armed with that information, who knows what he might do. But it's simply not relevant. Mr. Rock has testified, as you'll see when we get there, that at the time he made the promise, no cap was discussed with respect to the litigation. There's also going to be a question that Mr. Rancourt asked, "Well, is there a cap now?" to which the response was, "That's not relevant." The question of what this is going to cost the University is not relevant to a question of whether the University's decision to fund it is champertous or part of a maintenance or trafficking in litigation. And with respect, it's not relevant because, unlike some of the cases my friend talked about, particularly the class actions, where there's an investment made by the funder in return for an expected return, that is, a profit on

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the investment, that's not what the University has said. They said that they'll fund this litigation – period. They're not getting a return on their investment. The amount of their investment and the amount of the return is not relevant because there is no return.

M. RANCOURT: Ça me semble central et pertinent à toute entente de connaître les quantités. Ça me semble évident. C'est évident dans toute la jurisprudence que j'ai lue. Et c'est tellement évident que c'est même pas une question qui doit être décidée dans la jurisprudence que j'ai lue. En plus, je....

LE TRIBUNAL: Quelle est la jurisprudence qui...

M. RANCOURT: Oh.

LE TRIBUNAL: ...que vous citez?

M. RANCOURT: Je pourrais aller aux paragraphes 14 et 15 de mon argument oral de ce matin, aux pages 7 et 8 dans la section qui s'intitule, "Nature of the agreement is central."

Au paragraphe 15, il y a,

"The quantum of funding is a defining feature of the agreement."

C'est à la page 8 de mon – de mon énoncé. Et je cite là deux exemples de jurisprudence où on parle des quantités de financement.

LE TRIBUNAL: Mais là, la cause que vous citez, je pense que c'est une poursuite de "class action" comme poursuite d'un recours collectif. C'est aussi grand. Ça c'est pas un recours collectif.

M. RANCOURT: Elle est possible.

LE TRIBUNAL: Oui. Ça s'applique pas du tout. C'est pas même en considération. Pis McIntyre, c'est encore question de "contingency fees."

M. RANCOURT: Oui, c'est vrai.

LE TRIBUNAL: L'analyse est complètement différente.

M. RANCOURT: Ça me semble important. Par exemple, le M. Doody a suggéré – je m'objecte à ça, que je pose cette question-là pour des raisons malveillantes. Pourquoi est-ce que ce chiffre serait embarrassant d'aucune façon que ce soit? Donc il me semble que même juste de suggérer ça démontre la pertinence de ce chiffre.

LE TRIBUNAL: Okay. C'est pas pertinent.

M. RANCOURT: Le numéro 10 -- pourquoi est-ce que ce cas est important à l'Université? En quoi est-ce que c'est important? Pourquoi est-ce que ça préoccupe l'Université?

Je demande au Chef du Bureau des gouverneurs. Il me semble que ça parle directement par rapport aux motifs. Donc ça me semble pertinent.

LE TRIBUNAL: Mais la question est – est-ce que vous acceptez que effectivement que la question est telle que proposée – telle qu'indiquée par

Me Doody?

"At the time of the October 19th meeting, did you feel what the president was informing you about regarding this lawsuit was an important matter, Mr. Giroux? Without speculating, in your position you are asked continuously to distinguish between important matters and less important matters and not important matters. It is an important decision-making capacity in important

matters. In part because of this, the media – is the other reason why this – this is important." [as read]

5 **M. RANCOURT:** Est-ce que vous m'avez posé une question?

LE TRIBUNAL: Non, non, mais c'est tel que reproduit par Me Doody.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay?

10 **M. RANCOURT:** Oui. Donc moi....

LE TRIBUNAL: Et c'est pertinent pourquoi?

M. RANCOURT: Pardon?

LE TRIBUNAL: Pourquoi c'est pertinent?

M. RANCOURT: C'est pertinent de savoir....

15 **LE TRIBUNAL:** Qu'est-ce que M. Giroux pense – si c'est important.

M. RANCOURT: Sa position, en tant que représentant d'une institution, à savoir pourquoi ce cas est important pour l'Université, je pense est très pertinent.

LE TRIBUNAL: Mais la décision....

M. RANCOURT: Je l'ai....

LE TRIBUNAL: C'est la décision – la décision – la demande a été faite par le Président.

25 **M. RANCOURT:** Ben c'est-à-dire c'est une institution et le Bureau des gouverneurs est l'autorité au-dessus du Président qui représente vraiment la corporation.

THE COURT: Okay. Not relevant. Doesn't have....

30 **M. RANCOURT:** Pardon?

LE TRIBUNAL: Pas pertinent.

M. RANCOURT: Alors il y a la question du cap. C'est relié à la quantité; c'est relié à la nature de l'entente; et la nature de l'entente parle directement des motifs. C'est la question 11.

LE TRIBUNAL: Non. Ça – pas pertinent.

M. RANCOURT: Je veux signaler à la Cour au numéro 12 que quand je mets des questions en parenthèses, c'est simplement pour donner un background à titre d'information. Ce n'est pas une question comme telle à laquelle je cherche une réponse. Quand je mets en parenthèses comme ça, c'était pour donner la question précédente – pour donner le contexte de la question plus courte.

Alors je cherchais à connaître l'impact financier de cette décision, et je cherchais à avoir une réponse par rapport à ça.

LE TRIBUNAL: Okay. Mais encore la pertinence – question de la motion de champartie?

M. RANCOURT: La pertinence, c'est que si il y a un impact négatif important et que malgré ça on l'a fait, ça parle des motifs.

LE TRIBUNAL: Oui.

M. RANCOURT: Si l'institution s'est rattaché aussi à la question d'importance, si c'est important pour des mauvaises raisons et on est prêt à faire des sacrifices exceptionnels, ça informe le motif de l'institution pour faire ça.

LE TRIBUNAL: Okay – non. Pure spéculation de votre part. C'est pas pertinent.

M. RANCOURT: Dans la question 13, je demande s'il y a une politique universitaire qui limite les dépenses de discrétion du président et on

m'a dit que ce n'est pas pertinent. Il me semble que si le président est allé au-delà de ce qui est permis par discrétion en faisant l'entente avant de consulter le Bureau des gouverneurs ou une autre agence administrative de vérification, que ça parle directement du motif.

MR. DOODY: Your Honour, Mr. Rancourt again mischaracterizes the question, and in my chart I've set out the actual question, question 357:

"Is there a policy at the University authorizing the president to fund a project without limits?"

Answer:

"There are policies with respect to capital projects which have to be approved by the Executive Committee or the Board of Governors. I am not aware of a policy with respect to the kind of decision that we are talking about."

"Okay. So if you're not aware of it and you're on the Finance Committee of the Board of Governors, then probably such a policy does not exist."

Answer:

"You're speculating. I'm not sure whether it exists or not. I am telling you I'm not aware."

Question:

"Could you find out, please?"

Answer:

"No."

And the reason is that the witness is not required to give an undertaking, and in any event, it's not relevant. There's not been an allegation that Mr. Rock exceeded his authority and I know of no basis to suggest that. My friend here – Mr. Rancourt is fishing.

THE COURT: Okay, right. C'est pas pertinent.

M. RANCOURT:

"Est-ce qu'il y a un élément, une quantité de dépenses qui pouvait enchaîner un contrôle quelconque pour autoriser les dépenses? "

Ça c'était la question 14. Je pense que la réponse – la logique va être la même.

LE TRIBUNAL: Oui. C'est pas pertinent.

M. RANCOURT: La question 15 se réfère directement à l'évidence que j'ai de motif impropre – très sérieux – où l'Université a pratiqué une surveillance sournoise de moi et de d'étudiant et de d'autres employés de l'Université. Et donc pour illustrer à quel point jusqu'où ça peut aller et à quel point c'est grave, j'aimerais porter votre attention aux exhibits "Y," "Z" et jusqu'à "AF" dans le volume deux de mon Dossier de motion. Alors si on commence à "Y"....

On voit que la personne.... Donc tous ces....

D'abord on peut commencer avec l'affidavit lui-même parce que tous ces exhibits-là sont reliés à l'affidavit pour la motion des refus actuelle et cet affidavit donc, c'est le – c'est les paragraphes....

Je cherche dans l'affidavit où je fais appel à ça. Donnez-moi une seconde. Voilà.

Donc dans l'affidavit en question, qui est à l'onglet 2, à la page 16 du Dossier de motion,...

LE TRIBUNAL: On est....

M. RANCOURT: ...il y a une....

LE TRIBUNAL: On est rendu où?

M. RANCOURT: Pardon?

LE TRIBUNAL: On est rendu?

M. RANCOURT: On est rendu à l'onglet 2 dans le tome 1 de mon Dossier de motion et on est donc.... Donc je vais jouer entre les deux tomes, si vous me permettez.

LE TRIBUNAL: Deux – page?

M. RANCOURT: Page 16 du Dossier de motion. Et si on va à la section qui s'intitule, "Covert surveillance of Prof. Rancourt by the University of Ottawa," dans le paragraphe 26, j'explique que le 14 mai 2012, j'ai découvert par l'évidence qui était donnée par l'Université d'Ottawa qu'il y avait eu une pratique de surveillance extrême où on utilisait une étudiante qu'on avait engagée et que cette étudiante-là utilisait une fausse identité, une fausse identité électronique, et par – et dans des conversations téléphoniques aussi – pour obtenir des informations, pour enregistrer des présentations, pour suivre les présentations sur d'autres campus aussi loin que Vancouver, etc., et les documents qui sont les exhibits "Y," "Z," "AA," "AB," "AC," "AD," "AE" et "AF" sont des courriels qui ont été admis par l'Université comme étant authentiques et qui démontrent jusqu'où pouvait aller cette campagne de surveillance.

Et, par exemple, dans le courriel qui est montré à l'exhibit "Y," la personne en question, qui s'appelle Maureen Robinson, dit:

"I am going to join the Google group for this issue using my fake G-mail account."

Et elle donne le compte qu'elle utilise pour intégrer des groupes qui sont privés.

Et après ça, à l'onglet "Z" on voit....

Donc il y a – il y a plein de courriels comme ça qui montre jusqu'où sa fausse identité – la personne s'appelle Natalie Page – c'est le faux nom qui a été utilisé par Maureen Robinson pour contacter des éditeurs, des organisateurs sur d'autres campus, pour avoir des informations sur moi-même et de l'étudiant et d'autres employés.

J'attire votre attention en particulier à l'onglet "AC." Et à l'onglet "AC" cette personne qui s'appelle Maureen Robinson, on voit un message aux Doyens de la Faculté des sciences et aux conseils légaux de l'Université de l'époque sous le faux nom de Natalie Page. Vous pouvez voir ça dans l'adresse de courriel. Et elle dit:

"Hi. It's Natalie. Ha ha."

Puis en parenthèses, elle dit:

"You know, posing as a smiling school girl to get information makes me feel like those police officers who pose as 9-year-old girls..."

LE TRIBUNAL: Mais que....

M. RANCOURT: "...online in order to...."

LE TRIBUNAL: Mais j'ai du mal à comprendre où ça serait – ça serait – vous êtes indiqué dans – à ce courriel-là.

M. RANCOURT: Pardon?

LE TRIBUNAL: Où êtes-vous indiqué dans ce courriel?

M. RANCOURT: Ah, partout. Je dirais tout ça c'est à propos de moi et de la surveillance. Par exemple, sur la même page où on est là, "AC," il y a mes initiales, "DGR" – Denis Gabriel Rancourt – vous pouvez voir. Dans le courriel que j'étais en train de lire, on parle de moi.

Et donc par exemple, dans le troisième paragraphe, on dit:

"Oh. The news editor at the UBC is recording some lectures of interest and with DGR being the keynote,..."

C'est-a-dire the keynote speaker.

"...I am hoping the stars line up. I should know soon."

LE TRIBUNAL: Okay.

M. RANCOURT: Donc ces exemples sont....

LE TRIBUNAL: En 2007/2008.

M. RANCOURT: Oui. C'est en 2007/2008 et – et j'ai des raisons de croire que ce type d'activité a continué et je veux poser des questions pour savoir jusqu'où ça va et dans quelle mesure ça continue.

LE TRIBUNAL: Okay.

M. RANCOURT: Et c'est aussi dans la période....

Et là, il y a une erreur dans, je crois, le Factum de M. Doody, ou je ne sais plutôt lequel, mais il y a un énoncé comme quoi M. Allan Rock a commencé sa

présidence en 2009. C'est faux. Il a commencé – il l'a donné en témoignage – c'était en 2008, juillet 2008. C'est très clair.

Et M. Rock était au courant de beaucoup de ces choses-là. Donc il y a... C'est énorme.

MR. DOODY: I.... Your....

M. RANCOURT: C'est énorme...

MR. DOODY: Your Honour....

M. RANCOURT: ...ce qui se passe ici. Et....

MR. DOODY: Your Honour, Mr. Rancourt is correct. I apologize. I correct. The evidence of Mr. Rock was that he started...

THE COURT: Four months.

MR. DOODY: ...at the University on July 15th, 2008. Of course these e-mails we're looking at are in March of two thousand'.. –...

LE TRIBUNAL: Oui.

MR. DOODY: ...and January of 2008.

LE TRIBUNAL: Mais encore, cette idée de cette – de surveillance, ça fait partie de cette nouvelle théorie que l'Université – vous énoncez maintenant pour la première fois dans votre argumentation – que le but de la champartie, que le motif – il y avait des motifs qui date depuis 2009, vous n'avez jamais précisé ça.

M. RANCOURT: M. le Juge, tous ces documents que je présente ici sont devenu disponible que grâce à....

LE TRIBUNAL: Mais vous êtes au courant de la surveillance. C'est clair dans votre....

M. RANCOURT: Oui. Je suis au courant, mais les documents de preuve....

LE TRIBUNAL: En 2007, vous écrivez à l'Université pour avoir des copies.

M. RANCOURT: Oui. Je suis au courant, mais les documents qui ont été libérés...

LE TRIBUNAL: Non, non.

M. RANCOURT: ...sont ceux-ci.

LE TRIBUNAL: Mais vous êtes – vous étiez au courant depuis longtemps.

M. RANCOURT: Oui. Oui.

LE TRIBUNAL: Qu'on faisait une surveillance.

M. RANCOURT: Oui, j'étais au courant. Et je pense que la nature de cette surveillance est tellement énorme que ça montre à quel point l'institution – je parle de l'identité corporative – peut avoir des motifs impropres...

LE TRIBUNAL: Encore...

M. RANCOURT: ...à l'égard d'un individu.

LE TRIBUNAL: On retourne toujours. C'est pas un motif vous avez précisé dans votre Avis de motion, ni dans votre affidavit.

M. RANCOURT: C'est un motif. Donc mes questions se rattachent à ce thème de ces actions énormes de l'Université par rapport à son comportement corporatif. Donc toutes les questions à partir de – où est-ce qu'on est rendu là? – dans l'item 16 – toutes les....

LE TRIBUNAL: Non.

M. RANCOURT: Ce sont...

LE TRIBUNAL: C'est pas pertinent.

M. RANCOURT: ...des questions par rapport à la surveillance.

LE TRIBUNAL: C'est pas pertinent.

M. RANCOURT: Ensuite, par rapport à l'item 17, je demande.... Dix-sept et 18 sont reliés.

C'est des questions par rapport à l'utilisation des informations personnelles médicales des employés sans la connaissance de l'employé, à savoir si c'est une pratique acceptable ou pas – parce qu'il y a des évidences qui sont sorties qu'il y a eu une telle pratique à mon égard. Et donc, étant donné cette divulgation récente, j'ai voulu questionner sur ça. Et, évidemment, j'ai vu certains documents, qui restent à protéger, sous "implied undertaking."

Donc, personnellement, je suis motivé par ça, mais je ne peux pas divulguer la nature de ces documents, mais mes questions étaient pour aller chercher à quel point c'est de l'évidence d'une motivation impropre, cette pratique par rapport à l'information médicale, et à faire des évaluations – psychiatrique, par exemple – sans le consentement et sans la connaissance du professeur.

THE COURT: Okay. Mr. Doody? It's not part of – ça fait pas partie des allégations des motifs impropres de l'Université.

M. RANCOURT: Et ça, je dois dire ça aurait été impossible que ça fasse partie, parce que je n'ai découvert ça que grâce à l'arbitrage.

MR. DOODY: Well, with respect....

M. RANCOURT: D'ailleurs....

MR. DOODY: With respect....

M. RANCOURT: La – la – le document....

LE TRIBUNAL: Attendez un instant, okay?

M. RANCOURT: Pardon?

MR. DOODY: If I'm being asked to respond to that, in my submission, if he was unaware of it, he could have.... Well, let me just say this: I don't

understand, and in my respectful submission Mr. Rancourt has not established – how it could be relevant that the University asked – if the University did ask – to have a psychiatric evaluation of him done, how that could be relevant to either motivation, regardless of whether it's pleaded or not, or to the credibility of Mr. Rock. In my respectful submission, there's no basis for that established, nor is there any basis for the subsidiary question, which was, "What is the general policy about obtaining medical information without...".

LE TRIBUNAL: Bon. On va prendre une pause maintenant. We'll take a short break.

MR. DOODY: Thank you.

M. RANCOURT: Excusez-moi, M. le Juge, j'ai pas entendu.

LE TRIBUNAL: On va prendre une petite pause de 10, 15 minutes max.

MADAM INTERPRETER: À l'ordre, s'il vous plaît.

COURT REGISTRAR: Order, please. All rise.

L A S É A N C E E S T S U S P E N D U E (15h42)

À L A R E P R I S E : (16h01)

LE TRIBUNAL: Je veux m'assurer avec tout le monde – I want to clarify with everybody if we can go 'til five. Would that be acceptable to court staff? Is that okay? – jusqu'à cinq heures.

We had a late start. Normally we'd stop at a quarter to. An extra 15 minutes?

And we have another date, of July 24th – autre – date supplémentaire le 24 juillet, if we don't finish today.

MR. DOODY: Your Honour, I'm not available on the 24th of July but perhaps if we could deal with my issues first, we might finish them today.

THE COURT: Okay. Okay.

MR. DOODY: And, Your Honour, I was going to say when I stood up last time – and this is on the point of credibility – Mr. Rancourt has said that he only learned about the so-called surveillance activities of Maureen Robinson on May 14th, 2012 and in fact says that in his affidavit that he swore for this motion in paragraph 26 on page 16 of his Record, but in fact at exhibit "AF,"...

THE COURT: No, no, I saw it. August 6th, 2007, he asked for a copy....

MR. DOODY: ...he asked for all the e-mails from her. So it's....

M. RANCOURT: Euhhh....

MR. DOODY: I'm not sure how that could possibly be.

M. RANCOURT: Est-ce que je peux regarder le paragraphe en question? C'était quel paragraphe dans mon affidavit, vous dites? C'était quel paragraphe?

MR. DOODY: Yeah – 26.

LE TRIBUNAL: Vingt-six: "On May 14th I learned...."

M. RANCOURT: Non, non. Ce que je veux dire dans ce paragraphe, c'est que ça c'est la date à laquelle j'ai entendu tout le témoignage qui confirmait la complicité, la véracité et l'histoire de l'Université en témoignage. C'est ce que je voulais dire.

LE TRIBUNAL: Mais toutefois il y a cette preuve que vous-même avait déposé que vous étiez au courant le 6 août 2007.

M. RANCOURT: Excusez-moi, M. le Juge?

LE TRIBUNAL: Vous étiez au courant le 6 août 2007.

M. RANCOURT: C'est-à-dire que j'ai eu accès à des documents à travers Accès à l'information sans pouvoir les interpréter, sans savoir exactement de quoi il s'agit. J'ai fait des demandes. J'ai eu des accès de – par exemple, j'ai eu des indexes de documents sans avoir les documents. Et donc je savais d'après les indexes qu'il y avait des documents qui étaient en réponse à mes demandes d'accès à l'information, mais je n'ai pas vu les documents avant qu'ils soient donnés devant le tribunal en arbitrage. Donc je pense que mes énoncés à ces égards-là sont précis.

LE TRIBUNAL: Okay.

M. RANCOURT: Voilà.

LE TRIBUNAL: Il y a des preuves au contraire.

M. RANCOURT: Bon. Alors, M. le Juge, j'ai eu l'occasion pendant cet arrêt de regarder mes prochaines questions et évidemment...

MR. DEARDEN: Your Honour....

M. RANCOURT: ...beaucoup de questions sont les mêmes....

MR. DEARDEN: Excuse me.

M. RANCOURT: Non.

MR. DEARDEN: Where are you?

M. RANCOURT: Je vais...

LE TRIBUNAL: Okay, okay.

M. RANCOURT: ...l'expliquer plus tard. Je donne un préambule.

I'm not anywhere.

Attendez une seconde, s'il vous plaît, M. Dearden.

MR. DEARDEN: Your Honour, could I just know what number we're on on the chart?

THE COURT: No. He's...

MR. DEARDEN: Are we on 17?

THE COURT: ...just making a general statement about his remaining hundred questions. He's about to say something. Okay? Just wait.

M. RANCOURT: Si je peux continuer....

Alors ce que j'essaie de dire, c'est que j'ai eu l'occasion de revoir mes questions et, évidemment, il y a beaucoup – il y a des questions qui sont les mêmes qui sont posées aux différents témoins. Et donc comme il y a déjà eu des décisions par rapport à leur pertinence pour le premier témoin, qu'on a maintenant fini, qui était M. Giroux, je vais, dans l'effort de raccourcir les procédures aujourd'hui, je vais éliminer beaucoup de questions qui ont déjà été décidées pour les autres témoins.

LE TRIBUNAL: Okay. Mais est-ce qu'on a fini avec M. Giroux?

M. RANCOURT: Je crois que oui, Il y a juste....

LE TRIBUNAL: Il y avait....

M. RANCOURT: Excepté pour la question de...

LE TRIBUNAL: Des documents?

M. RANCOURT: ...de documents.

LE TRIBUNAL: Question numéro 1.

M. RANCOURT: C'est vrai. C'était la seule question. Donc si on tourne, pour conclure M. Giroux, il y a le document qui est le Summons to Witness, qui je crois est à mon onglet "B." Oui,

mon onglet "B" dans le – "2B." Et dans cette demande, évidemment je demande des documents qui sont pertinents et on a un désaccord par rapport à qu'est-ce qui est pertinent et ce qui ne l'est pas. Mais le but de cette notice était de demander tous les documents pertinents dans les catégories qui suivent ici. Et je suis d'accord avec M. Doody pour sacrifier, et aussi parce que je suis d'accord, que les communications privilégiées entre BLG, Université d'Ottawa, ne sont privilégiées. Ce que je voulais dire quand j'ai posé ça, c'était si BLG représentait la plaignante à ce moment-là, je voudrais – et que l'Université a été impliqué, et donc il y aurait une tierce personne, ça serait pas privilégié. Si c'est le cas, je veux aussi ces documents-là. C'est ce que je voulais dire. Et donc – donc, je précise ça.

Mais en gros, cette notice était pour demander les documents dans les catégories qui sont décrites ici qui seraient pertinents.

Et je pense qu'on a déjà décidé de la non-pertinence de la catégorie entière en répondant aux questions, si je me trompe pas, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Donc toutes ces catégories-là seraient éliminées.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Et donc, en grande partie, je pense qu'on a déjà...

LE TRIBUNAL: Terminé, okay.

M. RANCOURT: ...terminé, excepté pour la question des courriels, que maintenant on sait que

M. Giroux n'a pas examiné ses propres courriels.
Donc, par exemple, à l'item 4, je demandais:

"Copies of all e-mails and other
communications and all notes about..."

E puis en bas de cet item 4, je disais:

"The latter documents being in your
possession, control or power and not
privileged."

Donc j'ai demandé à M. Giroux de chercher ses
propres courriels pour des choses qui seraient
relatives à cette motion et qui pourraient toucher
moi-même, la plaignante et le cas en question, et on
a appris que M. Giroux n'a pas fait ça. Et donc je
demanderais qu'il fasse cet exercice-là pour pro-
uire ces documents qui seraient pertinents. C'est la
seule demande qui persiste dans ce document.

LE TRIBUNAL: Et la réponse....

MR. DOODY: I don't understand, Your Honour,
the precise request. The request that was in the
Summons to Witness is on page 5 of my chart in
italics:

"Copies of all e-mails and all other
communications and all notes about the
defendant, Denis Rancourt, and/or the
plaintiff, Joanne St. Lewis, and/or the
St. Lewis v. Rancourt lawsuit and/or
funding of the plaintiff's lawsuit costs
and/or the defendant's U of O Watch blog
and/or particular blog hosts."

And the answer says he doesn't have control over
the University's documents but there are no other
documents in the possession, control or power of

Mr. Giroux which are relevant to this demand and the champerty motion.

So that's the answer. He didn't cross-examine Mr. Giroux on that answer other than with respect to the e-mails about the date of the meeting, and that specific request has already been ruled on by Your Honour.

So I'm not sure what my friend is asking – sorry, what Mr. Rancourt is asking for now – but it seems to me he was told in the letter that there are no other documents which are relevant. And he didn't ask about any other documents.

M. RANCOURT: Dans mon sens, ce document légal, cette demande légale, a l'autorité de la loi et doit être suivie. Et pendant l'examination, j'ai découvert que M. Giroux n'a pas examiné ses propres courriels, les courriels auxquels il avait contrôlé. Donc il me semble que ce document doit être respecté. C'est la demande que j'ai faite. Et j'ai découvert uniquement après et dans l'examination que ce n'était pas le cas. Alors dans mon esprit, c'est suffisant pour pouvoir maintenant demander que ça soit respecté. Évidemment, je suis pas un avocat, mais ça me semble que c'est le cas.

MR. DOODY: Mr. Giroux – Mr. Rancourt did not ask Mr. Giroux what he'd done in respect of the search. He asked him if he would search his e-mail records for any e-mail between him and Ms. Davidson about the meeting that took place in October. Mr. Giroux' response to that question was, "I'm not gonna do it 'cause I'm pretty sure they're probably..."

THE COURT: No, but the question here...

MR. DOODY: "...phone...."

THE COURT: ...is in the Summons to Witness, he asked for these things.

MR. DOODY: Right. But....

THE COURT: And that he didn't bring them.

MR. DOODY: But first of all, they are not all relevant. Secondly, there was an answer which – that there are no other documents. And that's in the answer which I'm quoting in the italics. There are no other documents in the possession, control or power of Mr. Giroux which are relevant to this demand and the champerty motion. Mr. Rancourt asked him no questions about that. And he did not, as Mr. Rancourt suggested a moment ago – he did not ask for and receive an answer that Mr. Giroux had not looked in his e-mail. He didn't ask him that and he didn't get that answer.

M. RANCOURT: Pour moi cette réponse, c'est une réponse dans une lettre d'un avocat. Le témoin, par contre, a témoigné qu'il n'avait pas cherché ses propres courriels. C'était clair dans les questions/réponses que c'était le cas, et donc je me réfère à cette demande – et voilà.

MR. DOODY: Where?

M. RANCOURT: Dans l'échange par rapport à la question...

LE TRIBUNAL: Est-ce qu'il y a...

M. RANCOURT: ...Diane Davidson.

LE TRIBUNAL: ...une question?

M. RANCOURT: Pardon?

LE TRIBUNAL: Mais référez à une question exacte.

M. RANCOURT: Dans l'échange avec Diane Davidson, il est devenu clair. Je peux retrouver cet échange-là.

Alors c'est le sujet 5 dans le tableau, et c'est les questions 124 à 135. Donc cet échange-là se permet de voir clairement que....

MR. DOODY: I'm sorry, what question?

M. RANCOURT: C'est les questions 124...

MR. DOODY: Thank you.

M. RANCOURT: ...à 135. Et ça permet de voir, dans l'échange, par exemple:

"Were there any e-mail communications between you and Vice-President, Governance about this matter?"

Witness does not recall.

"Could you find out?"

"We have already."

"Could you find out, please, Mr. Giroux? I am asking you to find out if there were e-mails."

Alors,

"The University made a search. University has answered."

MR. DOODY: That's not....

M. RANCOURT: He....

MR. DOODY: Not....

M. RANCOURT: He has....

MR. DOODY: My friend....

M. RANCOURT: He has access....

MR. DOODY: Mr. Rancourt is not reading...

M. RANCOURT: In what....

MR. DOODY: ...from the transcript.

M. RANCOURT: No, no. Je suis en train de lire de mon tableau où certaines fois je résume les réponses parce qu'elles étaient longues, mais les questions précises sont telles que j'ai lues.

"He has access to his own e-mails."

Et c'est l'avocat qui répond:

"Fine."

Ensuite je dis:

"Mr. Giroux, will you search for those e-mails?"

"No."

"You will not personally look for these e-mails."

"No."

"Okay. You are refusing to look for e-mails that are under your possession and control that relate directly to this matter. Is that correct?"

"Yes."

MR. DOODY: But the....

M. RANCOURT:

"But you are refusing to search your own e-mails. Am I correct?"

"Yes."

MR. DOODY: Mister – Mr. Rancourt....

M. RANCOURT: It's for – for....

MR. DOODY: The question was about.... And if you go to page 35 of the transcript....

If Mr. Rancourt is going to read evidence to this court, he needs to read it all.

And go back to page 35 of the transcript. It's not in your chart, Mr. Rancourt; it's in the transcript – which is the evidence. And the evidence is –

Question 130:

5 "I do not, but I am asking the question.

Reason.

10 "My question is as follows: you have informed us today – and this was not in my notice – that you had a communication with Diane Davidson and I would like you to search for those communications. Do you agree to give – to find the e-mail communications between Diane Davidson and yourself about this matter that would have occurred approximately a week – that's a very rough estimate – in October, a week prior to October 19? Do you agree to search for those records?"

Mr. Doody:

20 "I'm going to give you a 'yes,' Mr. Rancourt."

"Okay. Let me talk."

Mr. Rancourt:

"You're answering for the witness."

25 Mr. Doody:

"Well, Mr. Giroux doesn't have access to the University's e-mail records."

Mr. Rancourt:

"He has access to his own e-mails."

30 Mr. Doody:

"Fine."

"Mr. Giroux, will you search for those e-mails?"

5 That's the question that he just read, and that question is asking him whether he would search for the e-mails between Diane Davidson and himself, which, as he says – Mr. Rancourt says on the transcript – "this was not in my notice." "Will you search for those e-mails?" Answer, "No."

10 That's the question that was put. That's the answer that was given. And that's the precise refusal that Your Honour ruled on earlier today.

M. RANCOURT: M. le Juge, deux réponses à ces soumissions.

15 Premièrement, il n'est pas question de – à savoir si l'Université va faire une recherche ou pas.

20 Deuxièmement, le contexte de la question précise qui amenait à la découverte que M. Giroux n'avait pas fait une recherche de ses propres courriels est une question à part du fait qu'on a découvert qu'il n'avait pas fait une recherche de ses propres courriels. Et le fait que l'Université insiste pour répondre à cette question en faisant une recherche du côté d'Université montre dans quelque sorte qu'il y a un désir de protéger M. Giroux de faire une recherche de ses propres courriels. Et donc la nature de la réponse de l'Université a toujours été de ce type-là, "Mais l'Université pourrait peut-être faire une recherche," etc.

30 Donc mon point est: on a découvert de façon non-ambiguë que M. Giroux n'a pas cherché ses propres courriels. Je demande maintenant qu'il le fasse, c'est tout.

LE TRIBUNAL: Okay – refusé. Dans cette – purement question de crédibilité, il a répondu à la question.

M. RANCOURT: Donc maintenant on peut passer au prochain témoin. Et comme j'ai expliqué, il y a plusieurs questions que je vais pouvoir éliminer, étant donné les décisions qui ont été prises à date.

On passe. Le deuxième témoin était M. Allan Rock, et c'est dans l'onglet 5...

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: ...de mon Dossier de motion, si je me trompe pas.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Oui, c'est ça. Et donc c'est le Tableau des Refus, l'onglet 5.

Alors, je vais abandonner l'item 1, 2, 3, 4, 5, 6, 7....

MR. DOODY: Hold on.

LE TRIBUNAL: Un, 2....

M. RANCOURT: Trois, 4, 5, 6, 7. J'abandonne ces items entiers dans mon tableau parce que c'est des questions très semblables aux questions qui avait été posées à M. Giroux et les décisions de pertinence ont déjà été prises par la Cour. Donc, j'élimine ces questions-là, si je peux.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Donc j'élimine aussi la question 8. Je ne suis pas d'accord que tous ces questions ne sont pas pertinentes, évidemment. J'ai déjà exprimé mes objections, dit mon interprétation, mais je les élimine parce que la décision a déjà été prise.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Et donc j'élimine aussi le 9.

MR. DEARDEN: Sorry, did you drop 8 as well?

MR. DOODY: Yes, he did.

M. RANCOURT: Oui. Tout jusqu'à 9 a été éliminé jusqu'à date.

LE TRIBUNAL: Il faut faire une correspondance entre....

M. RANCOURT: Et j'élimine aussi le 10.

Donc on est rendu à l'item 11 dans le Tableau des refus pour M. Allan Rock. Et j'aimerais, avant d'adresser cet item 11, j'aimerais faire une soumission, qui est la suivante.

M. Doody a proposé que ce que M. Rock faisait, c'était à donner un....

LE TRIBUNAL: Attendez. J'ai votre cahier de motion. J'ai ce que M. Doody a préparé.

I'm trying to correlate between these two. I have – you produced "Refusals and Undertakings Chart."

MR. DOODY: Well, the two – the two.... If I can assist, Your Honour, the two charts – my chart in the typing that's not in italics is copied verbatim from Mr. Rancourt's chart. So we re-created Mr. Rancourt's chart in Word format,...

THE COURT: All right. Okay.

MR. DOODY: ...in electronic.

THE COURT: So.... I know. But you...

MR. DOODY: Then the italics...

THE COURT: ...have a first part...

MR. DOODY: ...from mine....

THE COURT: ...from the Notice of Examination. It's the second part of the actual questions. Okay, I've got it now.

MR. DOODY: So I think it's on page 27 of my chart, which is issue 11. I think that's where my friend is now.

THE COURT: Okay, we're at page 27 of your chart and page 5, à page 5 de votre – la page 331 de votre Dossier de motion, M. Rancourt.

M. RANCOURT: Oui.

THE COURT: "Common motives for dismissal and maintenance."

M. RANCOURT: Oui. Nous sommes à la page 331 de mon Dossier de motion.

LE TRIBUNAL: Oui.

M. RANCOURT: Mais avant de poursuivre avec cet item 11, j'aimerais faire une soumission, qui est la suivante:

M. Doody a dit – a fait la soumission que M. Rock agissait en tant que témoin qui donne sa connaissance et non simplement basé sur l'information ou des croyances. Je conteste cette position-là.

LE TRIBUNAL: Sur l'affidavit de M. Rock?

M. RANCOURT: Oui. J'ai pas pu ici mettre la main sur l'affidavit-là rapidement. Peut-être que M. Doody peut...

LE TRIBUNAL: Il y a des mots clefs.

M. RANCOURT: Pardon?

LE TRIBUNAL: Il y a des mots clefs. Lorsque ça indique que c'était suite aux renseignements fournis par les autres, ça doit le dire clairement.

M. RANCOURT: Oui. Alors c'est où?

MR. DOODY: It's in my Record, Your Honour. Mr. Rock's affidavit is in my Motion Record, the University's Motion Record, at tab 2, page 34.

M. RANCOURT: Okay – oui, à l'onglet 2.

MR. DOODY: Yes.

M. RANCOURT: Et à la page 34, oui. Donc voici.

THE COURT: It's tab B-2, is it? Yes, I have it.

M. RANCOURT: Okay. Donc je voudrais expliquer pourquoi je conteste cette position de M. Doody.

Donc si on regarde l'affidavit de M. Rock, le paragraphe 5 dit, en partie, au début:

"I made the decision that the University would reimburse Prof. St. Lewis for the legal fees incurred in her defamation action against the defendant."

Et au paragraphe 10:

"At the time that I agreed that the University would reimburse Prof. St. Lewis for her legal fees, I had no idea," etc.

Donc il me semble que M. Rock est en train de dire dans son affidavit que l'Université paye les dépenses du Prof. St. Lewis dans cette action. Par contre, quand j'ai questionné M. Rock:

"Par quel mécanisme est-ce que l'Université paye?"

"Quelles sont les procédures administratives?"

"À qui avez-vous demandé à l'intérieur de l'Université pour que ce processus soit mis en marche?" etc.,

il ne savait pas; il ne se souvenait pas; il a aucune idée. Et donc il a pu donner aucune information qui signalait qu'effectivement l'Université paye les

dépenses du Prof. St. Lewis. Je n'avais pas moyen de voir par quel schéma administratif c'était le cas. Et donc je crois que ça veut dire que M. Rock n'a pas une connaissance de cette chose, c'est-à-dire du...

LE TRIBUNAL: Non, non.

M. RANCOURT: ...fait précis...

LE TRIBUNAL: Non, non.

M. RANCOURT: ...que l'on paye.

LE TRIBUNAL: Non, non. Mais son affidavit – il faut le voir – il est clair:

"I have knowledge of the matters to which I hereinafter depose except or expressly stated to be on information and belief."

Il signale que c'est Me St. Lewis qui lui a communiqué certaine information et par la suite qu'il a été donné des renseignements par M. Scott – Me Scott. Mais à l'exception de ces paragraphes-là, tous les autres – par son affidavit, il donne de sa propre connaissance.

M. RANCOURT: Mais mon problème, c'est que je n'ai pas façon de savoir, avec des données concrètes, si l'Université paye réellement.

LE TRIBUNAL: Non, non, mais....

M. RANCOURT: Parce que je n'ai pas eu accès....

LE TRIBUNAL: On parle de deux choses complètement différentes. Vous les prétend'.. – parce que Me Doody cite certaines jurisprudences lorsqu'un témoin donne un affidavit selon son propre témoignage et non pas basé sur les motifs, les renseignements des autres, il n'est pas nécessaire de faire des engagements ou faire des

enquêtes supplémentaires. Donc je pense que c'est dans le cas de cette jurisprudence dont on parle. Donc vous avez dit que M. Rock ne parle pas de sa propre connaissance, mais son affidavit, le fait est c'est un affidavit, "Je parle de ma propre connaissance autre que – si je dis autrement...".

M. RANCOURT: Ce....

LE TRIBUNAL: Et c'est clair c'est – s'il prend des renseignements d'autres personnes, c'est de la part de Mme St. Lewis and Professor – Me St. Lewis et Bruce Feldthusen et M. Scott.

M. RANCOURT: Ce que je veux dire, M. le Juge – ce que j'essaie de dire – est la partie légale est loin d'être aussi débloquée que j'aimerais; mais ce que j'essaie de dire, c'est que j'avais demandé que M. Rock soit un témoin. On me l'a proposé en tant que déposant avec un certain cadre d'information qu'il allait amener très précis et très limité. À travers ce processus, je n'ai pas pu percer l'énigme de l'administration, ses fonds, et les faits réels en fait qu'il y a un paiement, qu'il y a des paiements, qu'il y a une vérification, etc. Je n'ai pas pu accéder à ça.

Donc il y a cet individu qui est la corporation de l'Université d'Ottawa qui fait quelque chose, et même en interviewant le Chef du Bureau des gouverneurs et le Président, je n'ai pas pu savoir c'est qui a cette chose et quelle est la nature de cet arrangement, et c'est ça qui m'embête.

LE TRIBUNAL: Et c'est pertinent pourquoi?

M. RANCOURT: C'est pertinent parce que – la nature d'une entente est pertinente parce que....

LE TRIBUNAL: Mais vous savez la nature de l'entente.

M. RANCOURT: Je connais....

LE TRIBUNAL: Que c'est de rembourser les frais de – de Me St. Lewis.

M. RANCOURT: Je connais seulement certains composants de la nature...

LE TRIBUNAL: Mais pourquoi...

M. RANCOURT: ...de cette entente.

LE TRIBUNAL: ...savoir plus que ça? L'élément essentiel, c'est qu'ils – c'est qu'ils payent.

M. RANCOURT: Nous.... Je – je – je suis pas...

LE TRIBUNAL: Ça c'est admis.

M. RANCOURT: ...d'accord parce que....

LE TRIBUNAL: Ils payent. Ils payent les frais.

M. RANCOURT: D'accord. Mais nous pouvons passer donc à un autre....

LE TRIBUNAL: Non, mais c'est vrai. Mais alors est-ce qu'ils payent deux fois par mois ou trois fois par mois, l'élément composant c'est que les frais sont payés.

M. RANCOURT: Non, M. le Juge. Il pourrait y avoir plein de composants de cette entente qui seraient directement pertinents. Par exemple, l'entente pourrait dire, "Donnez-nous des rapports de – de – de dépenses et nous allons décider en allant qu'est-ce qu'on fait," "Il y aura un cap qui – qui est en...".

LE TRIBUNAL: Pis....

M. RANCOURT: Et donc ça parlerait de....

LE TRIBUNAL: Ces questions-là ont été répondues, qu'il n'avait pas de cap.

M. RANCOURT: C'est-à-dire j'ai posé la question, "Est-ce qu'il y a un cap aujourd'hui?" On a refusé de me répondre à cette question-là.

LE TRIBUNAL: Mais on parle.... Là je suis perdu. Je pense qu'on parlait de la question 11.

M. RANCOURT: Oui. Alors je veux revenir à la question 11.

LE TRIBUNAL: Okay.

M. RANCOURT: C'était en parenthèses simplement pour exprimer mon désarroi devant cette impossibilité d'obtenir des informations qui d'après moi sont pertinentes. Mais je vais revenir à la question 11.

Alors la question 11 – il y avait une série de questions; par exemple:

"Before I was dismissed from the University – that happened on April 1st, 2009 – did you have strong views about why it would be beneficial or good for me to be dismissed?"

On a répondu que c'était pas pertinent.

"I am exploring other motives that you may have, and that is what these questions are related to."

Aucune réponse.

"Now, did you have strong views about why it would be good for me to be dismissed before I was dismissed, Mr. Rock?"

Pas pertinent.

"But I'm asking you more questions that explore your motivation, Mr. Rock, based on other evidence and I want answers to these questions. Did you have strong views

about why it would be beneficial that I be dismissed from the University?"

Pas pertinent.

5

"Before 2009, Mr. Rock, did you have reasons for wanting me dismissed in addition to the official reasons that were given?"

Pas pertinent.

10

"I suggest that you did have reasons other than the official reasons that were given and that you expressed these reasons clearly to some of your staff."

Pas pertinent.

15

"Mr. Rock, I suggest that you wanted me gone and silenced. Isn't that correct?"

Pas pertinent.

20

"I suggest that you have done everything you could and this lawsuit is just a continuing of this campaign in order to have me gone and silenced."

Pas pertinent.

25

"After I was dismissed, Mr. Rock, did you not continue to express negative views about me to executives and staff at the University of Ottawa?"

Pas pertinent.

30

Alors là, sur ces questions, j'aimerais amener des documents qui montrent effectivement que M. Rock a eu ces – ces visions-là et ces comportements-là. Et j'attire votre attention à l'onglet dans mon Dossier de motion 2-U – 2-U. Et là on voit un courriel de M. Allan Rock qui est envoyé à Julie Cafley, est son – son – je pense qu'on pourrait

appeler son Chef du bureau, et André Dumoulin, qui est le Chef des relations médiatiques à l'Université d'Ottawa. Et donc je suis à l'onglet "U" – 2-U de mon dossier. Et ce courriel dit:

"With any luck...".

Si on regarde en bas de point 4-là:

"With any luck, firing him will get him off campus, allow staff and faculty and students to get back to what we're here for, and let us get beyond what she herself calls 'garbage.' If only he was as benign and cost-free as she suggests..."

Ensuite, si je passe...

LE TRIBUNAL: Non, mais...

M. RANCOURT: ...à l'onglet....

LE TRIBUNAL: ...encore, ça fait partie de votre théorie que l'Université avait cette rancune contre vous qui date depuis longtemps et c'était ça les vrais motifs pour commencer la poursuite – pour payer les frais de Me St. Lewis contre vous.

M. RANCOURT: Tout à fait.

LE TRIBUNAL: C'est cette théorie. Mais ça c'était pas.... Je répète: ça a pas été plaidé dans votre Avis de motion.

M. RANCOURT: Ce n'a pas été dit explicitement de cette façon-là quand j'ai parlé de motif, mais, M. le Juge, c'est tellement énorme ce qui se passe ici que je demanderais à la Cour, parce que la Cour a la discrétion d'admettre ceci, de l'admettre. Par exemple, si vous regardez l'onglet "W," il y a....

LE TRIBUNAL: Il est trop tard maintenant, M. Rancourt. Vous avez donné un Avis de motion,

un affidavit à l'appui. Les parties adverses ont répondu. Il y a des interrogatoires. Là, vous complètement changez l'enjeu, élargi votre théorie en plein milieu de l'argumentation. C'est injuste.

MR. DEARDEN: Your Honour, also not unfair – or also unfair, rather – is, I believe – and correct me if I'm wrong, Mr. Rancourt – but the document you just referred to at page 254 of your Record, is this not one of the documents that you have to seek leave of Justice Beaudoin to introduce in the champerty motion, which is a motion which is supposed to be brought on August 29th? He doesn't have....

This is post his cross-examination affidavit that he told us sometime recently, Justice Beaudoin, that breaking news coming to the May 14th arbitration hearing was that Sean McGee was going to be filing some bad faith evidence and he wanted to put in another affidavit, and that was the affidavit that he needs leave to put – or to get the evidence in, and now he's stuck it in his refusals motion.

Right? This is.... This is....

M. RANCOURT: Oui.

MR. DEARDEN: Yeah, okay. Okay.

M. RANCOURT: Tout à fait. Possiblement. Je n'ai pas vérifié si cette.... C'est – c'est possible. Je n'ai pas – cette question-là, j'ai pas fait la vérification précise, mais je crois que ce document est pertinent à cette motion pour les refus. C'est pour ça que je l'inclus maintenant. J'ai maintenant accès à ce document et je crois qu'il est pertinent pour cette motion de refus.

J'aimerais signaler un autre document parce que ce document relie de...

MR. DEARDEN: Just so I'm clear on....

M. RANCOURT: ...- de des....

MR. DEARDEN: Mr. Rancourt, just so I'm clear on the record, I'm saying you can't do that. You can't do that.

THE COURT: No.

MR. DEARDEN: 'Cause you haven't got leave yet to have this in this motion.

LE TRIBUNAL: Pas la permission de la Cour de faire référence des documents additionnels.

M. RANCOURT: Dans la motion principale, M. le Juge, mais nous sommes dans....

LE TRIBUNAL: Non, aujourd'hui - mais vous ne pouvez pas éviter ça en les introduisant ici aujourd'hui.

M. RANCOURT: Mais ils ne sont pas encore admissible dans la motion principale. Ils sont ici pour....

LE TRIBUNAL: Alors pourquoi je devrais les traiter maintenant?

M. RANCOURT: Parce que...

LE TRIBUNAL: Pourquoi...

M. RANCOURT: ...ils sont pertinents....

LE TRIBUNAL: ...ils seraient admissibles maintenant?

M. RANCOURT: Parce qu'ils sont pertinents à la question...

LE TRIBUNAL: On n'a pas...

M. RANCOURT: ...des refus.

LE TRIBUNAL: ...décidé l'admissibilité de ces documents-là.

M. RANCOURT: Dans la motion principale,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...on n'a pas décidé.

LE TRIBUNAL: Alors pourquoi ils seraient
admissibles maintenant?

M. RANCOURT: Parce qu'ils sont pertinents à la
motion pour les refus, M. le Juge.

LE TRIBUNAL: Non. Élargir toujours votre Avis
de motion avec les documents vous n'avez pas eu la
permission de déposer.

M. RANCOURT: Je... Je... En les introduisant
ici, je ne les introduis pas dans la motion
principale. Je...

LE TRIBUNAL: Mais vous voulez mettre en
preuve. Ça fait la même chose.

M. RANCOURT: Ils peuvent être exclus si la
décision...

LE TRIBUNAL: Mais non. Je peux pas me fier
sur un document sur lequel on n'a pas encore
tranché la question d'admissibilité.

M. RANCOURT: Mmm. Je pense que le
document – je crois que le document "W" n'est pas
un de ces documents-là, mais plutôt un autre. Je
sais pas – je ne sais pas s'il est dans cette
catégorie-là ou pas, mais je trouvais qu'il est
important pour les refus parce qu'il relie M. Bruce
Feldthusen, qui est un des...

MR. DEARDEN: Yes, it is.

M. RANCOURT: ...un des déposants.

MR. DEARDEN: It's subject to the leave
application...

M. RANCOURT: Oui?

MR. DEARDEN: ...as well.

M. RANCOURT: Okay. Mais dans – ce document relie M. Rock et M. Feldthusen par rapport à moi. Alors une des personnes dans la motion principale...

LE TRIBUNAL: Je répète encore,...

M. RANCOURT: D'accord.

LE TRIBUNAL: ...M. Rancourt,...

M. RANCOURT: D'accord.

LE TRIBUNAL: ...vous n'avez pas dans votre Avis de motion plaidé que ça fait partie d'une campagne de la part de l'Université de débarrasser de vous. Vous avez plaidé spécifiquement que c'est une motion – la poursuite de Me St. Lewis contre...

M. RANCOURT: Monsieur....

LE TRIBUNAL: ...vous devrait être suspendue parce qu'il y a une entente entre l'Université et Me St. Lewis qui – contre la loi contre la champartie. Vous avez précisé que, premièrement, il y a eu une entente de rembourser les frais, et qu'il y a une partage des sommes, une promesse de la part de Me St. Lewis de partager les sommes qu'elle peut retrouver si elle fait une poursuite contre vous, et que, finalement, les motifs de l'Université en s'appuyant – en – rentré dans cette entente avec Me St. Lewis pour payer ses frais – que l'Université voulait utiliser le fait de cette poursuite dans l'arbitrage contre vous.

Vous n'avez pas plaidé cette campagne, cette théorie que l'Université a depuis longtemps cette campagne de débarrasser de vous, et que ça fait tout un petit morceau de toute cette campagne. Ça c'est une belle théorie que vous lancez aujourd'hui pour la première fois.

M. RANCOURT: Et je crois, M. le Juge, que cette théorie est la vérité et c'est la seule occasion, dans cette motion....

5 **LE TRIBUNAL:** Et moi je vais vous dire – je répète encore – c'est pas – que vous avez plaidé. On traite uniquement aujourd'hui d'une motion de refus à des questions qui ont été posées dans le cadre d'un Avis de motion et un affidavit vous l'apportez – étaient beaucoup plus diminués que vous prétendez aujourd'hui.

10 **M. RANCOURT:** Donc, M. le Juge, si je comprends bien, vous dites que toutes les questions que je viens de lire par rapport aux motifs de M. Rock, vous les juges non-pertinentes?

15 **LE TRIBUNAL:** Non-pertinentes.

M. RANCOURT: D'accord. Alors je peux passer maintenant à l'examen de Mme St. Lewis.

LE TRIBUNAL: Est-ce qu'il y a pas d'autres questions par rapport à M. Rock?

20 **M. RANCOURT:** Non. C'était....

LE TRIBUNAL: Et on devrait passer à Mme Delorme – parce que Me Doody ne peut pas venir ici – parce que Me Doody ne peut pas venir le 24 juillet. Il n'est pas disponible.

25 **M. RANCOURT:** J'espère qu'on va pouvoir finir aujourd'hui. C'est mon but. Est-ce que vous dites que le 24 c'est une date pour continuer?

LE TRIBUNAL: Ça c'est – le 24 – pour les refus des interrogatoires au préalable.

30 **M. RANCOURT:** Ah, oui. Donc on pourrait d'abord finir cette motion?

LE TRIBUNAL: Oui, mais je voulais – Me Dearden est disponible, mais non pas...

M. RANCOURT: Ah, d'accord.

LE TRIBUNAL: ...Me Doody. Donc il faudrait procéder....

5 **M. RANCOURT:** Okay. Donc je peux – je peux, de façon très courte, résumer la situation avec....

LE TRIBUNAL: Non. Vous abandonnez 12 et 13? Parce que c'était refusé.

M. RANCOURT: Oui. Parce que ça avait été refusé avant.

10 **LE TRIBUNAL:** À la part de M. Giroux. Okay.

M. RANCOURT: Exactement.

LE TRIBUNAL: Okay.

M. RANCOURT: Donc je les abandonne pas, mais y en déjà – les décisions ont déjà été prises.

15 **LE TRIBUNAL:** Oui, oui.

M. RANCOURT: Donc je peux rapidement, dans l'effort de sauver du temps à la Cour et à tout le monde, résumer la situation avec Mme Céline Delorme. Alors voici, et je pense que c'est
20 relativement simple.

Mme Delorme a soumis un affidavit dans lequel elle a inclu deux exhibits. Dans l'exhibit "A," c'était une espèce d'énoncer introduction – document – accompany – qui accompagnait les – les commentaires d'ouverture de l'Université dans le Tribunal par rapport au travail. Ce document – j'ai toute raison de croire, avec document à l'appui, qu'il y a des erreurs dans ce document et que les avocats de l'Université savaient que ces choses étaient en
25 erreur. Il y a même un document qui montre, que j'ai ici, que l'avocat de l'Université en chef, M. Harnden, a dit, effectivement – "Je vais corriger mon erreur à l'arbitre par rapport au contenu de ce document. "
30

Donc mon but c'est de démontrer que
Mme Delorme, ou bien savait qu'il y avait des
erreurs dans ce document, ou bien est tellement pas
au courant qu'elle ne devrait pas mettre ce
document de l'avant comme quelque chose qu'elle
connaît. C'est mon but. Et....

LE TRIBUNAL: Je comprends pas là.

M. RANCOURT: Pardon?

LE TRIBUNAL: Là je comprends mal.

M. RANCOURT: Oui. Faut que je résume
encore?

LE TRIBUNAL: Oui. Je comprends pas parce que
Maître – c'est "Maître" Delorme?

M. RANCOURT: Oui, Maître Delorme.

LE TRIBUNAL: Me Delorme dit simplement....

MR. DOODY: It's in my record, Your Honour,
at...

THE COURT: I'm looking at it.

MR. DOODY: ...tab.... Okay. Sorry.

M. RANCOURT: C'est où?

LE TRIBUNAL: Elle répond:

"The University is not using defamation in
the arbitration, nor . . . determine the
issue. The University is only asking the
arbitrator to consider the content of the
defendant's blog, the statements made
about Prof. St. Lewis, not the fact that he's
involved in the defamation lawsuit.
Written submissions of the University in
the labor arbitration is attached as
exhibit 'A'. Furthermore, at the
October 31st arbitration session before
arbitrator Claude Foisy, Mr. Harnden

reiterated in his opening statement in reply that he is not using the defamation."

Elle a dit:

". . .are my notes." "Attached as exhibit are my notes."

M. RANCOURT: Oui.

THE COURT:

"There is no verbatim transcript of labor arbitrations. These notes . . . from our best effort to record what was said at the hearing as it was said. . . . 'tending to make such notes as an accurate record. The relevant passages are found at pages 4 and 10 of my notes, as read as follows."

Hmm?

M. RANCOURT: Oui.

LE TRIBUNAL: Et il y a pas de problème avec l'exhibit "A," la pièce "A." J'avais....

M. RANCOURT: Là, vous voulez dire l'exhibit de Mme Delorme?

LE TRIBUNAL: Oui.

M. RANCOURT: Oui. Il y a – il y a – c'est de ça que je parle. C'est-à-dire que ce que je suis en train d'essayer d'expliquer, c'est que l'exhibit "A" n'est pas un document que Mme Delorme a écrit elle-même. C'est un affidavit qu'elle met en affidavit mais auquel elle a participé. Et donc j'ai voulu tester son degré de participation. Et ce document, son exhibit "A," contient des erreurs admises.

LE TRIBUNAL: Mais c'est le document qui a été déposé.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est vrai.

M. RANCOURT: Oui.

5 **LE TRIBUNAL:** C'est ça – c'est ça que je dis, c'est le document qui a été déposé.

M. RANCOURT: Oui. Donc ce que je suis en train de – je teste la crédibilité de Mme Delorme; c'est-à-dire que....

LE TRIBUNAL: Vous attaquez la crédibilité.

10 **M. RANCOURT:** Oui.

LE TRIBUNAL: Okay.

M. RANCOURT: Par rapport à un document qu'elle a mis en évidence,...

LE TRIBUNAL: Okay.

15 **M. RANCOURT:** ...une crédibilité...

LE TRIBUNAL: Alors...

M. RANCOURT: ...directement reliée...

LE TRIBUNAL: ...vous avez des problèmes si une question – c'est purement des questions de crédibilité, hein?

M. RANCOURT: Je dirais pas que c'est purement, M. le Juge, parce que c'est quand-même un document qu'elle a mis en évidence que je crois elle savait que ce document contenait des faussetés.

25 **LE TRIBUNAL:** Mais vous – vous dites clairement, "Issue – Credibility of exhibit 'A'."

M. RANCOURT: Donc ce document, son exhibit "A," contient des erreurs admises...

LE TRIBUNAL: Mm-mmm.

30 **M. RANCOURT:** ...et je crois que, donc, Mme Delorme savait...

LE TRIBUNAL: Non,...

M. RANCOURT: ...qu'il y avait....

LE TRIBUNAL: ...mais la question.... La question qui est pertinente dans son affidavit – it says they were not using the defamation arbitration, nor is he asking – arbitrator to determine issues relating to the defamation action. It's only asking – his blog...

M. RANCOURT: Vous avez raison, M. le Juge. Je cherche....

THE COURT: "Prof. St. Lewis, animosity towards co-workers. " Ça fait référence à ça.

M. RANCOURT: Là, je vous suis plus. On est où?

LE TRIBUNAL: Mais au document, la pièce numéro 1. Ben,...

M. RANCOURT: Oui.

LE TRIBUNAL: ...alors, vous dites qu'il y a une erreur à la page 12?

M. RANCOURT: Non, non, non. J'ai pas dit à la page 12. J'ai pas dit à la page 12 de ce document qu'il y a une erreur. Ce que je.... Ce que je dis, c'est que....

LE TRIBUNAL: C'est la page pertinente?

M. RANCOURT: Oui, c'est vrai. Mais ce document, qui a été mis en évidence, contient des faussetés que l'on peut démontrer et a quand-même été mis en évidence. Et donc je teste la crédibilité....

LE TRIBUNAL: Mais c'est les paragraphes 12, 13 qui sont les pages pertinentes. Il n'y a pas d'erreurs.

M. RANCOURT: Vous avez raison, M. le Juge. Mon seul intérêt dans cette question est de tester la

crédibilité de la dépositante par rapport à un document qu'elle a mis devant la Cour dans cette motion.

LE TRIBUNAL: Non, mais les faits pertinents du document qu'elle a déposé devant la Cour, qui traite uniquement de ces propos que l'Université aurait dit, la poursuite, les faits qu'y en trouve la poursuite de Me St. Lewis contre vous sont tels qu'ils sont énoncés aux pages 12 et 13. Donc il y a pas de contradiction.

M. RANCOURT: Oui.

M. RANCOURT: M. le Juge, je demande simplement qu'on me permet de tester la crédibilité de Mme Delorme par rapport à la véracité...

LE TRIBUNAL: Non, non. Non.

M. RANCOURT: ...de ce qu'elle a dans son dossier.

LE TRIBUNAL: Non. C'est pas pertinent, non.

M. RANCOURT: D'accord.

LE TRIBUNAL: Sur le point pertinent,...

M. RANCOURT: D'accord.

LE TRIBUNAL: ...il y a pas de contradiction.

M. RANCOURT: C'était ma demande.

LE TRIBUNAL: Okay.

C'est la seule question?

M. RANCOURT: Ben, toutes les questions se rattachent à ça.

LE TRIBUNAL: Okay.

M. RANCOURT: Et aussi au degré de connaissances de Mme Delorme et de.... Mais par rapport aux points précisément pertinents, je pense que je peux abandonner ça.

LE TRIBUNAL: Parce qu'ils ont répondu.

Est-ce qu'on peut procéder avec la question de Me St. Lewis ou est-ce qu'il est mieux de rapporter ça, si ça va être long? Parce que nous avons encore 15 minutes.

M. RANCOURT: Je pense qu'on peut la conclure.

THE COURT: Are you done with....

MR. DOODY: Just – just so that I'm clear, Your Honour: as I understand it, Mr. Rancourt has either received a ruling from the Court or withdrawn – withdrawn on the basis...

THE COURT: Withdrawn...

MR. DOODY: ...on the....

THE COURT: ...on the understanding...

MR. DOODY: ...on the basis....

THE COURT: ...that the Court has already ruled on it.

MR. DOODY: Exactly.

THE COURT: And ceased.

MR. DOODY: With respect to all of these requests.

THE COURT: So I'm not going to write "abandoned." I will write "already ruled on."

MR. DOODY: That's fine. Including.... Including with respect to the Notices of Examination and the Summons to Witness. Those issues are now dealt with, as I understand it?

LE TRIBUNAL: Pas si une catégorie distincte.

M. RANCOURT: C'est-à-dire que oui, je veux dire la Notice où j'ai demandé des documents...

LE TRIBUNAL: Mm-mmm, all right.

M. RANCOURT: ...pertinents à Mme Delorme, étant donné que je n'avais plus pas....

LE TRIBUNAL: Et M. Rock également?

M. RANCOURT: M. Rock – on n'a pas traité de cette question-là, je pense.

LE TRIBUNAL: Non. C'est pour ça on veut savoir là, parce que....

M. RANCOURT: Okay. M. Rock, j'aimerais regarder donc la notice en question.

LE TRIBUNAL: Ce sont des documents qui ressemblent énormément même documents que je crois M. Giroux....

M. RANCOURT: Donc ça va être rapide. J'ai uniquement besoin de les regarder rapidement.

Je pense que c'est l'onglet "B," 2-B de mon livret, si je me trompe pas.

LE TRIBUNAL: Deux?

M. RANCOURT: Deux-B.

LE TRIBUNAL: Deux-B.

M. RANCOURT: Vous voyez dans cette notice, j'avais demandé:

"University's improper motive – malice."

Donc c'était clair, même dans le motif. Mes opposants ne sont pas opposés à ça à ce moment-là.

LE TRIBUNAL: Deux-D.

M. RANCOURT: Et donc on a déjà réglé la question des paragraphes 7 et 8. Il y a déjà eu des décisions de la Cour sur ça. Par contre, et le seul que j'aimerais....

LE TRIBUNAL: Non, non, mais est-ce que dans votre Dossier de motion vous avez comme une liste des refus? – parce que Me Doody avait préparé quelque chose.

5

M. RANCOURT: Oui. Alors ce.... Non. Je peux résumer très rapidement le seul auquel je tiens et que je demande aujourd'hui – parce que ça n'a pas été décidé encore – c'est le paragraphe 5 dans cette notice à M. Rock. Et donc je prends la décision....

LE TRIBUNAL: Ça c'est 2-B.

M. RANCOURT: On fait l'entente, etc.

LE TRIBUNAL: Okay.

10

M. RANCOURT: Mais par contre, j'aimerais signaler que au début aujourd'hui, on a discuté la question de mon expert et d'un courriel qui avait été découvert que mon expert dit est authentique, c'est un courriel qui aurait dû être divulgué dans cette notice sous la rubrique du paragraphe numéro 5 et qui n'avait pas été divulgué. Donc ça se rattache aussi à cette question qu'on a débattue ce matin.

15

LE TRIBUNAL: Oui, okay.

MR. DEARDEN: Your Honour....

20

MR. DOODY: I believe the evidence, it wasn't admitted.

25

MR. DEARDEN: Your Honour, the e-mail he's referring to is the March 30th, 2012 alleged communication from Allan Rock to me. I'm telling you, as an officer of the Court, that that was not an e-mail sent by Allan Rock to me. That was a function, an automatic function, a response function of the Outlook calendar. That's what it was. That's why it says that I'm invited to an April 15th, 2011 meeting. That's impossible. He's not inviting me to a meeting a year ago. We're not in *Back to the Future*. Mr. Rancourt keeps on saying this is a communication that should have been disclosed. It's a communication that didn't happen. He didn't

30

5 send me that e-mail. Outlook sent that – or "put
me" – didn't send it, "put" me as a recipient in
there. So he's misleading you on what happened
there. Never sent. And I went on the record in the
cross-examination with Joanne St. Lewis to say,
when I saw that. I said, "What?" "What the?"
"Why?" "How?" "How?" That was the first time I
see this, that I'm in this invite. I never – I never
was invited to that meeting.

10 **THE COURT:** Well, we've already...

MR. DEARDEN: I wasn't at that meeting.

THE COURT: ...excluded. We've already
excluded the expert's opinion, in any event. But
we're at question 5. So, number 5:

15 "All documents in your possession and
control."

MR. DEARDEN: So what's he's doing, Your
Honour,...

THE COURT: Mr. Doody....

20 **MR. DEARDEN:** ...is he asked you – he's saying
to you, "The reason I want you to order item
number 5 in this Notice of Examination is because
you have this March 30th, 2012 invite from Allan
Rock to Rick Dearden that was never disclosed." It
wasn't disclosed, Your Honour, because he never
sent it.

THE COURT: Right.

M. RANCOURT: C'était....

30 **THE COURT:** I'm satisfied on that, but the
response made by the University on the part of
Mr. Doody is: seven documents were provided. The
other documents requested . . . Notice . . . are not
relevant to the issues of champerty motion; in

particular, documents with respect to quantum of fees payable to Prof. St. Lewis' counsel are not relevant, nor are issues relating to quantum of fees paid/payable to University of Ottawa's counsel.

M. RANCOURT: M. le Juge, M. Doody, si je comprends bien, a admis aujourd'hui devant la Cour que le courriel que j'ai montré que j'ai pu découvrir récemment s'y montre qu'on contacte David Scott dès le début septembre, et dans ce courriel on dispute, "Qu'elle va être notre approche?" – public, si on veut – suggère fortement qu'il y a beaucoup plus de courriels de ce type-là qui ne sont pas privilégiés,...

THE COURT: Okay.

M. RANCOURT: ...comme ce courriel lui-même n'est pas privilégié même si M. Doody dit qu'il serait privilégié – le bureau de l'Accès à l'information de l'Université dit qu'il n'est pas privilégié, et a relâché ce courriel – je pense qu'il y a beaucoup de communications internes de ce type-là, comme ça en ait un exemple, qui ont lieu à partir du moment où j'ai fait la demande, "Est-ce que vous financez ceci?" jusqu'à je sais pas quand. Mais dès quelques jours après ma demande, il y avait déjà des courriels internes qui n'impliquaient pas des avocats. Les avocats n'étaient pas en ceci. On parlait essentiellement de stratégie – de comment on va faire, est-ce qu'on va attendre, etc.

LE TRIBUNAL: Où – où – où sont ces courriels-là?

M. RANCOURT: Non. Je dis il y a probablement.

LE TRIBUNAL: Ah.

M. RANCOURT: Mais le courriel que j'ai montré est un courriel de ce type-là.

LE TRIBUNAL: Oui.

M. RANCOURT: On peut le relire, si vous voulez.

LE TRIBUNAL: Non.

M. RANCOURT: Voilà. À cause de l'existence de ce courriel, qui a été admis aujourd'hui, je pense qu'il y en a d'autres de ce type-là. C'est pour ça que je fais cette demande.

LE TRIBUNAL: Okay.

M. Doody?

MR. DOODY: Your Honour, we submitted this morning, and I understood Your Honour to accept, that there is not a request in this motion for a further and better search. And that seems to be what my friend – Mr. Rancourt rather – is now asking for. My letter of April 18th, which is at tab 2-E, page 42 of Mr. Rancourt's Record, specifically says:

"I am enclosing seven identified e-mails..."

which were provided to him.

I then say that the other documents requested are not relevant; in particular documents in respect of the quantum of fees payable to Prof. St. Lewis' counsel are not relevant, nor are issues relating to the quantum of fees paid or payable to U of O's counsel.

And if you go through the items in item number 5, in my respectful submission, Mr. Rancourt has not established why, in the preamble to five,...

"all documents in the possession and control of the University, of Mr. Rock, and all communications sent or received by him and/or his staff relevant to the St. Lewis and Rancourt lawsuit,"

...why on earth all of those documents would be relevant to the champerty motion. He's not submitted – given you any indication of why any document that comes within that description is relevant.

He then goes on to particularize:

"consultations, comments, opinions and advice about the St. Lewis and Rancourt lawsuit."

In my respectful submission, again he's not shown how that's relevant, and particularly not shown how it's relevant to the two key issues of motivation that he particularized in his Notice of Motion and affidavit.

Issues with respect to financial considerations and budgetary estimates and evaluations, Your Honour has already ruled on.

Similarly, financial administration memos and directives, Your Honour has ruled are not relevant.

Press, media and communications considerations, in my respectful submission, there's been no basis established for why those would be relevant to the two particularized instance – or particulars of motivation.

Insurance and liability considerations, Your Honour has already ruled on.

Invoices and bills with Gowlings and BLG, Your Honour has ruled on.

5

And the contracts and funding agreements and/or terms of reference with the Gowlings law firm and with the BLG law firm, again, they come within the financial considerations on which Your Honour has already ruled.

10

And in addition, the arrangements and the invoices with the BLG law firm are privileged, and the authority for that is the Sinclair Stevens case in the federal Court of Appeal that's in my Book of Authorities.

M. RANCOURT: J'ai déjà donné des précisions j'étais d'accord avec ce dernier point.

15

Effectivement, tel qu'on a défini ce qui est pertinent dans les décisions qui avaient été prises aujourd'hui, il y aurait probablement très peu de courriels. Le courriel que j'ai divulgué aujourd'hui est très pertinent à la question de motif,...

LE TRIBUNAL: Mais vous avez,...

M. RANCOURT: ...mais si on exclut le motif....

20

LE TRIBUNAL: ...ce sens, très élargi de – de motif, très répandu.

C'est la seule?

M. RANCOURT: C'est un autre sujet. Donc, oui.

THE COURT: Okay. We're out of time.

25

MR. DEARDEN: Your Honour, could I just ask.... I know we're out of time, but there's one – issue number 7 – in the Joanne St. Lewis matter that does deal with Allan Rock, and with Mr. Doody here.... And I think you've already ruled on it. It's:

30

"Can you undertake to instruct your counsel to provide all e-mail communications with Allan Rock that are relevant to this litigation?"

And this deals again with Mr. Rancourt's suggestion that this alleged March 30th, 2012 e-mail from Allan Rock to Richard Dearden and Allan Rock for a meeting April 15th, 2011. I think we can....

5 **M. RANCOURT:** Avant de prendre cette décision, M. le Juge, j'aimerais faire une soumission par rapport à ça – ou la garder pour la prochaine fois.

LE TRIBUNAL: Non. Number 7?

10 **MR. DEARDEN:** If you would look, Your Honour, at tab – at the Responding Motion Record of Joanne St. Lewis – or I'll hand you the Refusals Chart.

15 **M. RANCOURT:** C'est l'onglet 6 dans mon – dans mon Dossier de motion.

MR. DEARDEN: Like you to have my Refusals Chart, Your Honour, 'cause I've got my answers....

THE COURT: I do have one here somewhere.

20 **MR. DEARDEN:** Page 26 of the Motion Record of Joanne St. Lewis, page 10 of our chart.

LE TRIBUNAL: Une question madame – it's – the question is to – to Ms. St. Lewis, right?

25 **MR. DEARDEN:** Yes. It deals with communications with Mr. Allan Rock and in particular this March 30th, 2012 – so alleged e-mail from Allan Rock to me. So I submit, as I did with the expert witness, Your Honour, that it's completely irrelevant if Allan Rock did, in fact, invite me to a meeting in March of this year to the issues in the champerty motion. It's just completely irrelevant to start with. But it shows the absurdity....

30

THE COURT: The question is the – the specific question is:

"...undertake to instruct your counsel to provide all e-mail communications."

So that question.

M. RANCOURT: Avant de prendre une décision, je veux faire des soumissions sur les propos de M. Dearden qui, d'après moi, ne sont pas une bonne caractérisation de la situation, mais je regarde l'heure et je m'aperçois qu'on a peut-être pas le temps. Alors je veux savoir si je vais avoir le temps de faire une soumission.

LE TRIBUNAL: Pense pas qu'on a le temps.

I mean you can – you don't have to be here to deal with this.

MR. DOODY: No. I think that's right, Your Honour.

THE COURT: Okay. We'll deal with this on the next – July 24th. So we'll have to deal with Ms. St. Lewis' refusals at that time. We'll start that way and we'll continue with the refusals from the examinations for discovery.

MR. DEARDEN: And there will be two motions, Your Honour. There will be my motion, and I'm sure Mr. Rancourt will have a motion as well.

THE COURT: Okay.

M. RANCOURT: C'est ça. Et on n'a pas décidé dans quel ordre nous allons faire ces deux motions.

LE TRIBUNAL: C'est qui a signifié le premier ordinairement.

M. RANCOURT: Non. C'était simultané, parce que ça s'est décidé dans un – dans une conférence pour la cause.

LE TRIBUNAL: Okay. Ben, on va décider à ce moment-là. Je pense que vous avez eu l'occasion de procéder la première fois ici. Je pense que je vais donner la chance à Me Dearden à procéder.

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay?

M. RANCOURT: Donc, oui – parfait.

LE TRIBUNAL: Okay. On se revoit le 24 juillet.

COURT REGISTRAR: À l'ordre, s'il vous plait.

COURT SERVICES OFFICER: Order, please.

All rise.

LE TRIBUNAL: Merci, les interprètes, d'être venus à la dernière minute sans presque – très peu de préavis.

MR. DEARDEN: Thank you, Your Honour.

MR. DOODY: Thank you, Your Honour.

L A S É A N C E E S T L E V É E (17h04)

FORMULE 2
CERTIFICAT DE TRANSCRIPTION

Loi sur la preuve, paragraphe 5(2)

Je, la soussignée, **Leona M. Scott** certifie que _____,
(Nom de la personne autorisée)

le présent document est une transcription exacte et fidèle de l'enregistrement de l'affaire

Joanne St. Lewis c. Denis Rancourt dans la **Cour supérieure de justice**
(Nom de la matière) (Nom de la cour)

entendue à **161, rue Elgin à Ottawa mercredi, le 20 juin 2012**
(adresse de la cour)

prise de l'enregistrement **0411-51-20120620**, qui a été certifié en Formule 1.

25 juillet 2012
(Date)

(Signature de la personne autorisée)

COUR SUPÉRIEURE DE JUSTICE

(DIVISION CIVILE)

T A B L E D E S M A T I È R E S

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TRANSCRIPTION DEMANDÉE LE:	22	juin	2012
DEMANDE REÇUE LE:	25	juin	2012
TRANSCRIPTION COMPLÉTÉE LE:	24	juillet	2012
AVIS DONNÉ LE:	25	juillet	2012

COUR SUPÉRIEURE DE JUSTICE
(DIVISION CIVILE)

E N T R E :

JOANNE ST. LEWIS

(Demanderesse)

E T

DENIS RANCOURT

(Défendeur)

M O T I O N S

ENTENDUE DEVANT L'HON. JUGE ROBERT N. BEAUDOIN
Mardi le 24 juillet 2012 à Ottawa

(Tome II)

Comparutions:

R. Dearden

D. Rancourt

Avocat pour la Demanderesse

Pour lui-même

**Mardi,
le 24 juillet 2012.**

(10ho6)

MR. DEARDEN: Good morning, Your Honour.
I'll go get Mr. Rancourt.

...Le greffier annonce l'ouverture du Tribunal

LE TRIBUNAL: Bonjour, M. Rancourt.

M. RANCOURT: Bonjour.

THE COURT: So, to be clear: again today,
Mr. Dearden, you can make your submissions in
English without being translated – to you?

M. RANCOURT: Oui. Ça a toujours été comme
ça qu'on a fonctionné.

LE TRIBUNAL: Okay. Mais on continue toujours
comme ça.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est uniquement le cas de
représentations que vous allez faire en français.

M. RANCOURT: Qui sont traduites.

LE TRIBUNAL: Qui seront traduites pour
M. Dearden. Okay? D'accord.

Là, je voudrais bel et bien.... Je sais qu'on continue
toujours la question des refus...

MR. DEARDEN: Your Honour, sorry....

LE TRIBUNAL: ...lors des contre-interrogatoires.

MR. DEARDEN: My translators are standing
there, Your Honour.

THE COURT: Oh, okay.

MS. BORRIS: We need to be affirmed, Your
Honour,...

THE COURT: All right. I'm sorry.

MS. BORRIS: ...if it please the Court.

MR. DEARDEN: And, Your Honour, while that's happening, may I have your permission again to use my Echo Smartpen to take notes?

THE COURT: Sure. No problem.

MS. BORRIS: Good morning, Your Honour.

ODETTE BORRIS AND DANIEL RENAUD: AFFIRMED

(as interpreters – French/English)

...Interpretation to be provided *sotto voce* from French to English only, appearing herein indented and in italics in order to set it apart from what is spoken in the courtroom

MR. DEARDEN: So, Your Honour, while they're getting into the booth, my list of things to do today would be firstly to deal with the defendant's champerty refusals motion with respect to Professor St. Lewis, and then the second motion would be Prof. St. Lewis's refusals motion in the libel action, and then followed by Mr. Rancourt's refusals motion in the libel action.

M. RANCOURT: M. le Juge, je dois soulever un point important immédiatement avant de commencer la séance.

We do have an important point here.

Pour les refus, ceci est la première occasion devant le Tribunal...

This is the first occasion in front of the Court.

Et je m'excuse. J'ai laissé mes lunettes de lecture à la maison. Je vais peut-être avoir un peu de misère.

*I'm sorry, I may have a bit of a
problem. I left my reading
glasses at home.*

5 Mais c'est la première occasion devant le Tribunal
de soulever cette question difficile depuis que cette
position s'est cristallisée pour moi.

*This is the first opportunity in
front of the Court to bring up this
difficult question.*

10 Je demande que la motion présente soit ajournée
pour me permettre d'étudier le procès-verbal de
notre dernière séance et de déposer une motion
pour demander que vous vous récusiez pour crainte
raisonnable de partialité et apparence d'un conflit
15 d'intérêt.

*I ask that the present matter be
adjourned to allow me to read up
on the transcript from the last
and I ask that you recuse yourself
for appearance of lack of
20 confidentiality. [sic]*

C'est la première occasion devant le Tribunal.
J'avais des craintes et des impressions depuis notre
première conférence sur la cause le 8 février 2012,
25 mais pour moi il y a maintenant un patron qui s'est
établi que je viens de comprendre, qu'il me paraît
concret et réel maintenant....

*From our first conference on the
8th of February heard by yourself,
30 I now have established that I have
understood.... It appears concrete
and real for me....*

Immédiatement après notre première séance du 20 juin 2012 sur la motion des refus pour la motion champartie, j'ai commandé le procès-verbal en urgence le 22 juin 2012.

Immediately after our first hearing on June 20th, 2012 on the refusals motion for the champerty motion, I ordered the transcript on the 22nd of June, 2012.

LE TRIBUNAL: Mm-mmm.

M. RANCOURT: Je n'ai pas encore reçu ce procès-verbal. J'ai besoin de ce procès-verbal pour préparer la motion pour que vous vous récusiez pour crainte raisonnable de partialité. C'est une motion difficile et une position difficile que je dois maintenant prendre et que je dois maintenant exprimer.

I have yet to receive that transcript. I need that transcript to allow me to prepare the motion for your recusal because you have been partial. It is a difficult position that I need to now communicate to the Court and that I now need to express to you.

En tant que personne non-représenté, auto-représenté, j'avais des impressions, des premières réactions qui étaient perturbés, et maintenant je vois un patron, surtout suite à notre toute dernière rencontre du 20 juin 2012 dans la motion présente, et encore un patron, je crois, qui emmènerait une personne raisonnable et informée à avoir une

crainte raisonnable de partialité et d'un esprit fermé devant les questions de la motion de champartie et la motion pour refus et la cause en général.

As an individual – as an unrepresented, or self-represented, party, I was perplexed by your initial reactions and now, especially given the 20th of June, 2012 in the current refusal motions – and now I believe that a reasonable person, an informed, would see your partiality, given the questions with the champerty motion and the refusal motions, as well as the case in general.

Je veux mettre sur le procès-verbal de la Cour des éléments qui m'emmènent à cette position aujourd'hui. Ces éléments sont incomplets sans le bénéfice du procès-verbal de la dernière séance, mais les voici; je les présente pour appuyer ma demande d'ajournement aujourd'hui.

I will now put on the record the items, or issues, that make me raise this today. Without the benefit of the transcript, this list will be incomplete. However, I will give you the list supporting my motion for adjournment.

À la conférence sur la cause du 8 février 2012, nous avons la tâche, entre autres, de cédule ma motion pour champartie et maintenance qui a comme but

premier de radier ou d'arrêter l'action. La Notice de motion était devant la Cour le 8 février.

At the case conference of the 8th of February, 2012, we had the task, among others, to schedule the champerty motion which aim is to either stop or cancel this case – on the 8th of February.

J'ai un extrait du procès-verbal du 8 février ici en commençant à la page 21 – en fait, c'est les pages 21 à 35. J'aimerais souligner quelques éléments de ce procès-verbal.

I have an extract of the transcript of the 8th of February starting at page 21 – page 21 to 35. I have underlined a few elements of that.

MR. DEARDEN: I'll just go on record, by the way, Your Honour,...

M. RANCOURT: *Je veux....*

MR. DEARDEN: ...that Mr. Rancourt has not given me any prior notice that he was going to be making the submissions that he is making now, nor that he was going to be handing out the material that he's handing now; and I also will be strenuously objecting to his latest move here to delay the trial of this action.

M. RANCOURT: J'accepte mal cette caractérisation de M. Dearden et je ne mets pas ces documents en évidence, mais simplement pour un guide pour expliquer pourquoi dans les arguments pour un ajournement....

I don't accept this characterization by Mr. Dearden. This is to

*explain why I am asking in my
argumentation for an
adjournment.*

M. RANCOURT: À la page....

MR. DEARDEN: And just for clarity of the
record....

M. RANCOURT: À la page 21....

MR. DEARDEN: Just for clarity of the record,
Your Honour, if I could, could you have
Mr. Rancourt confirm that he is not disputing the
fact that he did not give me any prior notice that he
was going to seek an adjournment today and claim
that you are biased. Can we just have him
confirm...

LE TRIBUNAL: C'est vrai?

MR. DEARDEN: ...for the record?

LE TRIBUNAL: Vous n'avez pas averti
M. Dearden?

*That's true? You didn't give
Mr. Dearden any warning?*

M. RANCOURT: J'ai préparé ces matériaux ces
derniers jours.

I have prepared....

LE TRIBUNAL: Mais vous l'avez pas averti. C'est
vrai?

You haven't given him any notice.

M. RANCOURT: Non. C'est vrai.

No. That's true.

LE TRIBUNAL: Okay. D'accord.

All right. So no notice was given.

M. RANCOURT: J'ai pas compris vos derniers
mots, M. le Juge.

I didn't hear your last words.

LE TRIBUNAL: D'accord.

"All right," is what I said.

M. RANCOURT: Okay.

LE TRIBUNAL: J'ai compris.

I understood.

M. RANCOURT: Donc, à la page 21, la question de champartie, vous dites, M. Le Juge:

"La question de champartie touche uniquement le cas entre Mme St. Lewis et l'Université. Donc ça n'affecte pas le bien-fondé de la poursuite de libelle diffamatoire contre vous."

So on page 21, the champerty issue, you say :

"That will be solely judged on the relationship between Ms. St. Lewis and the University and it doesn't deal with the defamation suit against you."

Un peu plus bas, à la page 22, vous dites:

"Le Tribunal tranche la question de champartie et dit, bon, et annule l'entente entre elle et l'Université au sujet des frais."

Further, you say :

"The Court will rule on champerty and will cancel – or would cancel – with regards to loans, the agreement on loans."

À la page 23, vous dites, et ce sont que des extraits:

"C'est un gaspillage significatif des ressources."

"Du temps et des parties en question de la Cour?"

Ça c'est moi qui dis ça. Et vous répondez:

"Mais ça ne touche pas la question. Okay?"

On page 23 – these are all extracts:

"This is a waste of resources, of time."

I'm saying that.

And you answer:

"But it doesn't deal with the issue."

Ensuite, à la page 24, je dis:

"Alors, M. le Juge, ce que je veux dire c'est que si la motion pour champartie a un succès, l'action entière est annulée."

On page 24, I say:

"Also, Your Honour, what I'm saying is that if the champerty motion is successful, the entire action is brushed aside."

Et vous dites:

"Non."

You say:

"No."

Ensuite, à la page 25, je dis:

"Peut être annulée. C'est-à-dire qu'il y a une bonne chance que l'action soit annulée, étant donné la jurisprudence."

5

On page 25, I say:

*"It could be struck.
There's a good chance
that, given case law."*

Et vous dites:

10

"Non, non. Citez-moi une cause où l'action a été annulée."

And you say :

*"No, no. Give me case
law where an action was
struck."*

15

Ensuite vous dites, un peu plus bas à la page 25:

"Montre-moi une décision."

*And then you say, a little further
on page 25:*

20

"Show me case law."

Ensuite je passe à la page 29. Vous dites en haute page à la ligne 3:

"Cette cause-là ne cite pas.... C'est pour...."

25

*Then on page 29, you say, at the
top of the page on line 3:*

*"This case, it's not
applicable."*

Et je dis:

"Je suis d'accord, M. le Juge."

And I say:

"I agree."

Vous dites:

"Ce n'est pas pour la proposition de la poursuite – que la poursuite annule."

"It is not for the proposition of the suit – that the suit is nul."

Ensuite, à la page 31, vous dites, à la ligne 16:

"Mme St. Lewis fait une poursuite contre vous de libelle diffamatoire."

On page 31, you then say, on line 16:

"Mrs. St. Lewis has launched a libel suit and defamation suit against you."

Ensuite vous poursuivez:

"Le bien-fondé de cette poursuite..."

And then you pursue:

"The foundation of this lawsuit is not that."

Et vous poursuivez:

"...ce n'est pas ça. Ce n'est pas l'introduction...."

Excusez-moi, ça c'est pas pertinent.

I'm sorry, that's not quite....

Vous dites:

"Le mérite de cette poursuite n'est pas tranché par la question de champartie."

5

"The merit of this suit is not dealt with the champerty motion issue." [sic]

Et un peu plus loin, à la page 32, vous dites:

10

"Ça touche uniquement à la question, 'Est-ce qu'elle a le droit d'avoir l'université payer ses frais?'"

And on page 32, you say:

15

"It only deals – solely deals – with: does she have the right to have the University pay her legal costs?"

À la page 33, vous dites:

20

"Mais vous n'avez pas identifié dans vos matériaux une telle décision."

On page 33, you say:

25

"But you haven't identified in your materials such a caselaw."

Et je dis:

"Mais, M. le Juge, je n'ai pas eu l'occasion de faire mon Factum, mais je crois...."

And I say:

30

"Your Honour, I did not have the opportunity to

*prepare a Factum, but I
do believe...."*

Ensuite, à la page 35, vous dites:

"Non? Je peux vous dire que ça ne vaut pas
la peine. Franchement, la question de
l'entente, ça va être tranchée avant le
procès."

And then, on page 35, you say:

*"No? I can tell you that
this is not worth....
Frankly, the agreement –
the agreement issue will
be dealt with before
trial."*

Je vais soumettre qu'une personne raisonnable et
informée aurait, en entendant ces mots, une crainte
raisonnable que votre esprit était fermé à la possi-
bilité que la motion pour maintenance et
champtie pouvait mener à l'arrêt de la cause
principale même si plus tard vous admettiez la
possibilité.

*I submit that a reasonable and
informed person could, hearing
these words, have a belief that,
given your words – that the
champtie motion could lead to
the full action being struck, even
though you precluded that
possibility. [sic]*

Plus loin dans la même conférence sur la cause à la
page 81 du procès-verbal du 8 février 2012 – et là
j'ai un autre extrait juste à page 81 et 82 de ce
même procès-verbal que je peux vous donner.

Further, in the same case conference on page 81 of the transcript on the 8th of February, 2012 – and there I have another extract, page 81 and page 82 of that transcript, which I can hand up to you and give to Mr. Dearden.

LE TRIBUNAL: Vous devriez, M. Rancourt,...
Mr. Rancourt,...

M. RANCOURT: Oui.

LE TRIBUNAL: Si vous retirez d'un procès-verbal, vous devriez le fournir au complet et non pas tirer de certaines pages.

...if you take an extract from a transcript, you should be supplying it in its entirety.

M. RANCOURT: Oui. Je comprends ça, M. le Juge. J'ai fait ça à la dernière minute...

Yes. I understand. But I did that at last minute.

LE TRIBUNAL: Ah, non, mais dans.... Écoute.
No. But we...

M. RANCOURT: ...et....

LE TRIBUNAL: On doit avoir toute la transcription, tout le procès-verbal.

...need the full transcript, the full transcript.

M. RANCOURT: Oui. En ce moment aujourd'hui, je ne fais que mes arguments.

Presently, I...

LE TRIBUNAL: On ne peut pas ré – piéger ici et là, trouver des – des – des remarques d'une page ou

de l'autre, de sauter d'une page à l'autre. Faut le prendre dans son ensemble.

*You cannot extract here and there
remarks from one page or another
and jump from one page to
another. You have to take those
extracts in their totality.*

M. RANCOURT: Aujourd'hui – M. le Juge, je ne fais que présenter mes arguments pour ajourner aujourd'hui et sans mettre des documents devant la Cour. C'est ce que j'ai pu préparer à la dernière minute.

*So here I am only presenting –
making my arguments for an
adjournment.*

LE TRIBUNAL: Mais c'est un document qui est en date depuis le mois de février. On a eu plusieurs conférences relatives à la cause par la suite. Et là, vous soulevez la première fois le 24 juillet que les remarques que j'ai fait au mois de février.... Et depuis ce temps-là j'ai pris autres décisions où vous êtes mis en appel – c'est-à-dire la "*open-court principle*." Vous n'avez jamais touché cette question que j'étais préjugé contre vous pour présider à des motions traitant des refus lors des interrogatoires ou des contre-interrogatoires.

*But this is a document that's dated
since February. We've had
several case conferences since –
subsequently. And now you're
raising for the first time, the 24th
of July, that the remarks that I*

made in February.... And since that time, I have taken other decisions where you've appealed my rulings – for example, the open-court principle – and you didn't deal with this question that I was prejudiced and biased against you and unable to preside over motions dealing with refusals during the discoveries or the cross-examinations on affidavits.

M. RANCOURT: Monsieur....

LE TRIBUNAL: Ça c'est....

M. RANCOURT: Oui.

LE TRIBUNAL: Ce procès-verbal existe depuis longtemps.

So this – this transcript has been available for a long time.

M. RANCOURT: Oui. M. le Juge, permettez-moi d'expliquer. Comme j'ai dit au début, je ne fais que faire un rappel historique, mais ce sont des événements de notre toute dernière séance qui me préoccupe le plus; et si vous voulez, je peux aller de l'avant à ces événements-là. Si vous avez une objection à ce que je lisse les éléments que je pense se rattachent....

Yes. Let me explain, Your Honour. As I said at the beginning, all I'm doing today is going over the historical, but it's the last occurrences from our last case conference that concern me the most. So

that's why I'm putting those. And if you object that I use those elements that I think pertain....

LE TRIBUNAL: Non. Si je n'ai pas un procès-verbal au complet, surtout des événements de février.... Moi, je prends connaissance de tout ce qui s'est passé depuis ce temps-là. Sans doute, vous n'avez pas aimé les résultats que vous avez reconnus à la dernière séance.

No. If I don't have a complete transcript, especially the one from February.... I will take -- be made aware of everything. Unlikely -- or likely, you have not appreciated the rulings and results from the last motion, or case conference.

M. RANCOURT: Là n'est pas la question, M. le Juge. Alors permettez-moi de faire mes arguments, s'il vous plaît.

That's not the question, Your Honour. So please allow me to make my arguments.

MR. DEARDEN: No.

M. RANCOURT: Je vais....

MR. DEARDEN: No.

No.

M. RANCOURT: Je vais donc....

I will therefore....

MR. DEARDEN: Just a minute.

M. RANCOURT: Je vais donc....

MR. DEARDEN: Mr. Rancourt,...

LE TRIBUNAL: Attendez un instant.

Please wait a moment.

MR. DEARDEN: ...can you please sit down so that I can address the Court, please?

LE TRIBUNAL: Attendez un instant.

MR. DEARDEN: Your Honour, Mr. Rancourt isn't putting grounds for an adjournment on the record when he's pointing to passages of an incomplete transcript back in February. What he's doing is arguing his bias motion and putting these things on the record – probably for the purpose of that he can write a blog, or Mr. Hickey, who is with us again, can write a blog on...

M. RANCOURT: Je dois m'objecter.

I must object. I must object.

MR. DEARDEN: ...his Student's-Eye View.

LE TRIBUNAL: Attendez.

M. RANCOURT: Complètement inapproprié.

It's highly inappropriate.

MR. DEARDEN: Okay?

LE TRIBUNAL: Attendez.

MR. DEARDEN: And it is completely inappropriate for Mr. Rancourt to be arguing his bias motion that he didn't give notice on. And I want the Court to know that there was twice last week where Mr. Rancourt offered me an opportunity to adjourn today's proceedings. He has – and you'll be hearing about this today if we do continue – he has put an affidavit in of a Mireille Gervais, knowing that she would not be available for my cross-examination,...

M. RANCOURT: C'est faux.

That's not true.

MR. DEARDEN: ...and then offered me....

Will you please be quiet?

M. RANCOURT: Je m'objecte.

I am objecting.

LE TRIBUNAL: Non, non.

MR. DEARDEN: You will have your opportunity, sir.

M. RANCOURT: Je m'objecte...

MR. DEARDEN: You will have...

M. RANCOURT: ...à ces caractérisations.

I am objecting, Your Honour.

MR. DEARDEN: ...your opportunity.

LE TRIBUNAL: M. Rancourt,...

M. RANCOURT: Absolument faux.

LE TRIBUNAL: ...vous aurez – vous aurez pouvoir répondre.

You will be able to reply.

MR. DEARDEN: He put in an affidavit in Prof. St. Lewis – in his refusals motion for Prof. St. Lewis's examination of Mireille Gervais at the very last second that he could do it on Friday, the 13th. He had that affidavit since July the 9th. I say on the weekend 'cause Friday – I got it just before office hours ended. I write him on the Sunday. I serve him with a Notice of Examination. He immediately writes me back and says, "She's gone 'til August 2nd but I'll give you an adjournment."

I'll get into that in more detail because I'm actually going to seek costs on a full-indemnity basis for what he did there.

Then he also cross-examined...

M. RANCOURT: M. le Juge,...

Your Honour, but...

MR. DEARDEN: ...on Friday....

LE TRIBUNAL: Asseyez-vous.

M. RANCOURT: ...la motion qui va venir....

...I want to intervene.

LE TRIBUNAL: Asseyez.

MR. DEARDEN: No. I'm just putting on the record, Your Honour, that this – there was attempts by Mr. Rancourt to adjourn today's three motions. And that was the first one, Mireille Gervais' cross-examination. "We'll adjourn today and you can cross her when she's back in August."

And then he cross-examined our process server, [sic] who we sent to try to attempt to personally serve Ms. Gervais on Friday the 13th, and he couldn't. He served at the office.

And again – so then Mr. Rancourt serves me with a Notice to Cross-examine the process server and I say, "He's on holidays Monday but he is available on Friday."

He initially refuses to do any of that. "No." You know, "You can have an adjournment, but I," you know, blah, blah, blah. So....

M. RANCOURT: C'est complètement faux.

It's false.

LE TRIBUNAL: Asseyez-vous.

M. RANCOURT: Et les...

LE TRIBUNAL: Asseyez.

M. RANCOURT: ...documents le montrent.

And the documents show it.

LE TRIBUNAL: Asseyez-vous. Asseyez-vous.

Please sit down, sir.

MR. DEARDEN: So he's twice tried to seek an adjournment of today; and to, without notice, stand up now and ask that these three motions be adjourned is nothing but his attempt again to get an adjournment that I was not agreeing to because Prof. St. Lewis wants to get on with this libel action as fast as possible. And that's what he's doing, in my respectful submission.

He could have ordered the June 20th transcript on an expedited basis. We are – what? – July 24th today. He could have ordered that on an expedited basis. He did not do that. He would've had it. He could have filed a proper motion. Didn't do it. He knows the Rules actually better than – than, I think, half the people in this city. He knows what he's doing; and to do what he's doing now is completely objectionable.

LE TRIBUNAL: M. Rancourt, j'insiste. Vous devez préciser les motifs sur lesquels vous dites que je devrais me retirer.

Mr. Rancourt, I insist that you be precise about the grounds on which you say that I should recuse myself.

M. RANCOURT: Oui. Si j'ai bien compris, M. le Juge, vous me demandez de préciser ces motifs; c'est-à-dire préciser les raisons pour lesquelles je fais cette demande. C'est ça?

Yes. If I understood correctly, Your Honour, you're asking me to be more precise with these

*grounds; that is, be precise about
my reasons for which I'm bringing
about my request, yes?*

5 Et oui, je suis prêt à faire ça. Je suis en milieu de
présentations mais je – j'en ai pour une autre cinq
ou dix minutes. Et c'est des choses qui
m'inquiètent beaucoup et je veux les présenter très
clairement, sans plus d'interruptions, je l'espère.

10 *I am ready to do that. I'm in the
middle of my presentation. I have
another five to ten minutes of
presentation. And these are
things that preoccupy me a lot
and I will present them very
15 clearly without any further
interruptions – I hope.*

LE TRIBUNAL: Est-ce que...

Do you....

M. RANCOURT: Mais....

20 **LE TRIBUNAL:** ...vous tenez sur des choses que
j'ai dites au courant des conférences relatives à la
cause lors de l'audition de la dernière motion...

*Are you talking about things that
I was aware during case confer-
25 ences or the last hearing or...*

M. RANCOURT: Non.

LE TRIBUNAL: ...ou autre chose?

...other things?

30 **M. RANCOURT:** Oui, autre chose sûrement. Et
je vais les présenter. Donnez-moi une chance, s'il
vous plaît, M. le Juge.

*Well, yes, other things. I want to
present them. Please, Your
Honour, give me a chance.*

5 Mais avant de poursuivre ça, je veux m'objecter à la
mécaractérisation des faits que M. Dearden vient de
faire. C'est absolument, à mon sens, énorme. Il y a
des documents; il y a des courriels qui montrent les
dates. Il y a une contorsion des faits, que je
n'apprécie pas du tout.

10 *But before going in that vein, I
want to object to the mischarac-
terization of the facts from
Mr. Dearden, which, in my sense,
is huge. There are documents,
15 e-mail showing dates. There's a
contortion of facts, that I don't
appreciate at all.*

20 Et en plus, M. le Juge, j'ai remarqué que quand
M. Dearden a parlé de bloguer et de M. Hickey, j'ai
remarqué votre regard avec les yeux agrandis qui
regardaient vers M. Hickey.

25 *And on top of that, Your Honour, I
noticed that Mr. Dearden talked
about blogging. I noticed your
look with big eyes in the direction
of Mr. Hickey.*

À mon sens, M. le Juge, les blogs, les médias, ça
fait partie du concept de la cour ouverte....

30 *In my opinion, the blogs, the
media, that is part of open-court
concept.*

MR. DEARDEN: Just.... Just for the record,
Your Honour,...

M. RANCOURT: ...et on n'a pas...

We didn't do....

MR. DEARDEN: ...I want to...

M. RANCOURT: ...on n'a pas....

MR. DEARDEN: ...object to what he said here,
what was....

Excuse me, sir. You're not....

M. RANCOURT: Il est en train de
m'interrompre....

He's in the process...

MR. DEARDEN: You're not going....

M. RANCOURT: ...pendant que moi....
...of interrupting me.

M. RANCOURT: Alors....

THE COURT: Sit down, Mr. Dearden.

Je reviens. Je donne cinq minutes pour préciser les
motifs sur lesquels vous dites je devrais me retirer
de ce dossier.

*I come back now to.... I'm giving
you five minutes to be more pre-
cise on the grounds upon which
you rely to say that I should
recuse myself.*

M. RANCOURT: Ça va peut-être prendre sept
minutes, M. le Juge.

It might take seven.

LE TRIBUNAL: Cinq. Je vous donne cinq.

I am giving you five.

M. RANCOURT: Alors, je vais essayer de faire le
tri, dans ce cas-là. Donnez-moi quelques secondes
pour faire ça.

So I'll try and go through it in that case and just take out the significant items. Give me a few seconds to do that, please.

5 Okay. Le 20 juin 2012, l'Université avait mis de l'avant un affidavit de Me Roussy.

June 20th, 2012, the University had put forth an affidavit from Maître – from Alain Roussy.

10 Est-ce que c'est le meilleur exemple?

M. le Juge, la contrainte dans le temps me – me stresse beaucoup.

You know, the fact that I'm limited with time, I'm very stressed.

15 **LE TRIBUNAL:** Écoute. Vous avez fait ça à la dernière minute.

Well, you did that at the last minute. I'm listening to you.

20 **M. RANCOURT:** Oui.

LE TRIBUNAL: Je vous entends. J'aurais pu dire uniquement que vous n'avez pas donné un avis au préalable, c'est rejeté.

I could have said uniquely you didn't give forward motives and it's rejected.

25 **M. RANCOURT:** Merci de m'entendre, M. le Juge.

Well, thank you on my behalf, Your Honour.

30 **LE TRIBUNAL:** Est-ce que vous tenez uniquement – vous basez votre motion sur des remarques

que j'ai fait lors des conférences relatives à la cause ou dans le contexte de l'audition de la dernière motion?

Do you insist uniquely – uniquely – singularly – on comments I made at case conferences, or in the context of the last motions hearing?

M. RANCOURT: Non, M. le Juge.

No.

LE TRIBUNAL: Autre chose?

Other things?

M. RANCOURT: Oui, autre chose aussi.

Yes, also other things.

LE TRIBUNAL: Qu'est-ce qui est central?

Okay. What are they?

M. RANCOURT: Alors, il y a l'ensemble de certaines choses que vous avez dites pendant nos rencontres.

Well, there's the whole of certain comments that you made during our meetings.

On a eu trois rencontres pour la cause, je crois – le 8 février, le 4 avril et le 4 mai – et aussi pendant la dernière rencontre dans cette motion, qui était le 20 juin; et aussi en faisant ce travail maintenant que ça se concrétise dans mon esprit. J'ai fait une recherche sur le Web à votre regard, M. le Juge, et j'ai trouvé des éléments qui sont très inquiétants.

We had three meetings for the case, right? – 8th of February, April 2nd, May 4th – and also the

last meeting, 20th of June, for this motion; and also the work that was done now that it's becoming clear in my mind. I did a search on the Web about you, Your Honour, and I found elements that are very preoccupying.

LE TRIBUNAL: Okay.

M. RANCOURT: Et entre autres....

Among others....

Et donc, vous – si je comprends bien, vous voulez que j'aïlle à ces éléments-là, qui sont...

LE TRIBUNAL: Oui.

M. RANCOURT: ...les éléments additionnels.

If I understand correctly, you want me to touch on the additional elements that I have.

Alors, j'ai ici – trouvé un article, auquel je viens juste de découvrir en faisant cette recherche il y a un jour, qui a apparu dans *le Citizen* le 24 avril 2012.

So here I have.... I found about you an article – I just discovered this a day ago – that appeared the 24th of April, 2012, an article that appeared in The Citizen.

J'en donne une copie à M. Dearden et je vous en donne une copie.

I give you a copy, and a copy to Mr. Dearden.

Dans cet article, qui pourrait contenir des erreurs factuelles mais qui aussi pourrait être correct – de

toute façon, c'est ce que le public voit – on dit, à la première page....

In this article, that may, or could, contain factual errors – may or may not – but in any event, this is what is read by the public, it is stated on page one....

On parle de votre fils et on dit:

We talk about your son, and it says:

“Beaudoin is still picking his way through the rocky landscape of grief.”

Donc cette affaire vous préoccupe encore beaucoup.

So this – you're still preoccupied by that.

Et un peu plus bas, on dit:

And a little further:

“Says Beaudoin, ‘One impulse you have when you lose a child is to make sure their name isn't lost and people remember them.’”

Dans l'article vous expliquez que c'est une chose que vous faites pour garder la mémoire de votre fils en vie.

In the article you explain that this is something that you do to keep the memory of your son alive.

Et un peu plus tard dans cet article, il est dit:

And a little further in this article, it is said:

“The first – after a few rough months, the first step his family took was to set up a

scholarship in Ian's name at the University of Ottawa Law School. Beaudoin was also delighted that the law firm Borden Ladner Gervais, where his son was a second-year patent lawyer, named a meeting room after him."

Et ensuite on vous cite en disant:

And then you're quoted:

"So every day someone says, 'You can meet in the Ian Beaudoin Room.'"

Alors il y a, M. le Juge....

So therefore there is, Your Honour....

MR. DEARDEN: What you just did, Mr. Rancourt....

M. RANCOURT: M. le Juge....

MR. DEARDEN: I am objecting.

LE TRIBUNAL: Attends.

M. RANCOURT: Pourquoi cette interruption?
Why is there an interruption?

MR. DEARDEN: What you just did...

LE TRIBUNAL: Attendez. Just wait.

MR. DEARDEN: ...is sickening. It is sickening, what you just did, sir.

M. RANCOURT: Pourquoi à ce que....

MR. DEARDEN: I'm putting that on the record. I cannot believe that you would do that.

M. RANCOURT: M. le Juge, je - je - je prends note que vous permettez une telle interruption - ce qui n'est pas correct donc, ce que M. Dearden a fait. C'est comment....

Your Honour, I take notice that you are allowing such an

interruption. What is not right....

What is not....

MR. DEARDEN: No. I did it knowing full well, Mr. Rancourt, that you were going to object; and I'm standing up again saying what you just did has me actually shaking. I'm actually shaking – that you would do that, sir.

M. RANCOURT: Moi, je trouve ces commentaires inappropriés.

*I find that comment
inappropriate.*

LE TRIBUNAL: Je trouve....

I find....

M. RANCOURT: Alors....

LE TRIBUNAL: Je trouve vos remarques tellement choquantes et provoquantes, qui voulaient utiliser l'angoisse que j'éprouve au décès de mon fils et d'un projet qu'on a lancé dans la communauté à sa mémoire, ou prétendent que cet esprit d'angoisse me bouleverse tellement que je suis incapable de trancher les questions en jeu, je – je trouve ça....

I find your remarks so provocative and so insulting, that you would use them, the anguish that I would be going through as a result of the death of my son, and a project that was launched in the community in his memory, to purport that this feeling of anguish is so perturbing to me that I am incapable of ruling questions at issue. I find it....

M. RANCOURT: Je n'ai pas prétendu ça, M. le Juge. J'aimerais corriger. Je n'ai pas...

I did not put that out there. I'd like to correct.

LE TRIBUNAL: Je trou'....

M. RANCOURT: ...prétendu ça.

LE TRIBUNAL: Je trouve tellement choquant qu'un homme qui se dit professionnel à la recherche de la justice a pu pencher aussi bas que ça.

I find it so – so shocking that a man who would claim to be professional, seeking justice, would have stooped so low as to do that.

M. RANCOURT: Mais permettez-moi de faire mon argument, M. le Juge.

But please allow me to make my....

LE TRIBUNAL: Votre motion est complètement – de retard – est rejetée.

Your motion is out of time and it is not granted.

M. RANCOURT: M. le Juge....

LE TRIBUNAL: Nous procédons.

M. RANCOURT: M. le Juge,...

LE TRIBUNAL: Nous procédons.

M. RANCOURT: ...je n'ai même pas fait mon argument.

I have not even....

LE TRIBUNAL: Nous procédons.

We are going to proceed.

M. RANCOURT: M. le Juge....

LE TRIBUNAL: Nous procédons.

We are going to proceed.

M. RANCOURT: Je n'ai pas fait mon argument.

I did not even....

LE TRIBUNAL: Nous procédons.

We are going to proceed.

M. RANCOURT: J'ai lu...

LE TRIBUNAL: Nous procédons.

M. RANCOURT: ...quelques pages.

THE COURT: Go ahead with....

M. RANCOURT: Vous avez une entente
financière avec l'Université d'Ottawa.

*You have a financial agreement
with the University of Ottawa.*

Il y a une bourse au nom de votre fils. L'Université
d'Ottawa a dû approuver cette entente financière.

Elle peut annuler cette entente financière. Et vous
avez exprimé publiquement, M. le Juge, que c'est -
c'est...

*There is a scholarship in the name
of your son. The University of
Ottawa had to approve that
financial arrangement and can
annul that financial arrangement.
And you publicly expressed that...*

LE TRIBUNAL: Je répète....

I will repeat....

M. RANCOURT: ...c'est important pour vous.

LE TRIBUNAL: M. Rancourt, je répète: votre
motion pour un ajournement est refusée. Refusée.
Continue.

*M. Rancourt, I will repeat: your
motion for an adjournment is
denied. Denied.*

M. RANCOURT: Et donc est-ce qu'on....

And therefore....

LE TRIBUNAL: Est refusée.

Denied.

M. RANCOURT: Oui. Est-ce que on....

Yes.

LE TRIBUNAL: Motion d'ajournement – refusée.

*Your adjournment motion is
refused.*

M. RANCOURT: J'avais....

LE TRIBUNAL: Refusée!

It's refused.

M. RANCOURT: D'accord. J'ai compris.

I understood, Your Honour.

M. le Juge, je tiens à signaler que vos....

Your Honour, I would like to....

LE TRIBUNAL: Je prends une pause, et quand je reviens, dans 15 minutes, si vous osez continuer cette attaque personnelle contre moi en évoquant la mémoire de mon fils, je vais vous reconnaître en outrage au Tribunal. Nous procédons, dans un retard de 15 minutes, avec la motion pour les refus.

*I will take a recess, and when I
come back, in 15 minutes, if you
dare continue this personal attack
against me invoking the memory
of my son, I will find you in con-
tempt of court, sir. We are going
to proceed, with 15 minutes' delay,
with the motion to deal with the
refusals.*

CLERK OF THE COURT: Court is now in recess.

COURT SERVICES OFFICER: Order. All rise.

À l'ordre. Levez-vous.

LA SÉANCE EST SUSPENDUE (10h33)

À LA REPRISE: (10h50)

LE TRIBUNAL: M. Rancourt, je tiens à souligner qu'il n'y a, à mon avis, aucun conflit entre moi et l'Université d'Ottawa à cause d'une bourse qu'on a créé à la mémoire de mon fils.

Mr. Rancourt, I want to tell you quite sincerely that there is no conflict between myself and the University of Ottawa because of a scholarship in the memory of my son - created in the memory of my son.

Il n'y a pas de possibilité d'annuler cette bourse.

There is no possibility of cancelling this scholarship.

C'est un contrat qui était conclu entre moi, le gouvernement de l'Ontario, qui a également contribué en fonds sommes égales, l'établissement de cette bourse.

It is a contract that was contracted between myself, the Government of Ontario, who also contributed an equal amount of money to the establishment of this scholarship.

Pas de possibilité d'annuler cette bourse. Il y a pas de conflit d'intérêts.

There is no possibility of this being cancelled, this scholarship. There's no conflict of interest.

Par contre, je trouve que votre geste ce matin en me remettant une copie de cette article qui existe depuis trois mois....

However, I find that your conduct this morning, by giving me a copy of this article that has been available for the last three months....

Et vous faites ça souvent, hein? Vous arrivez à la dernière minute. Vous vous prétendez, "Je viens de découvrir." C'est un truc favori chez vous.

You do that often. You arrive at the last minute. You pretend, "I've just discovered." It's one of your favourite tricks, isn't it?

Pourtant, c'était dans le grand public depuis trois mois.

However, it's been available to the members of the public for three months - over three months.

Et vous tenez non seulement à lire le paragraphe qui fait référence à la bourse, vous tenez à souligner l'angoisse que j'éprouve toujours auprès de la mort de mon fils.

And you insist not only in reading the paragraph that refers to the scholarship, you underline the anguish that I am still dealing with as a result of the death of my son.

Jamais, jamais de ma carrière juridique, que j'ai vu un geste aussi écœurant, provoquant, et complètement indigne. Vous aurez pu faire ça. Pour...

*Never, never in my legal career
have I seen such a dispicable
action, provocative, completely
unbecoming. You could do that,...*

M. RANCOURT: M. le Juge, je....

Your Honour....

LE TRIBUNAL: ...prendre mon angoisse et me le
jeter en face comme ça...

*...take my anguish and throw it in
my face.*

M. RANCOURT: M. le Juge, c'est....

Your Honour....

LE TRIBUNAL: ...j'ai, malheureusement....

I have, unfortunately....

M. RANCOURT: Vous.... Vous....

LE TRIBUNAL: Vous avez réussi. Vous avez
réussi, M. Rancourt. Je ne peux plus continuer à
présider dans votre présence. Je serais incapable.
Vous avez réussi.

*You have succeeded,
Mr. Rancourt. You've succeeded.
I cannot continue to preside in
your case. I will be incapable.
You have succeeded, sir.*

Vous m'avez provoqué tellement avec ce geste le
plus pénible on aurait pu m'imposer, que je suis
incapable d'être juste envers....

*You have provoked me to such an
extent with this action, the most
painful that I could have been
asked to deal with, I can't – I
can't be just towards you.*

Il faudra trouver un autre juge présider, acquitter
frais, des frais dépens de cette présence
aujourd'hui.

*A new judge will need to be found
to preside over this action and
that will deal with the cost of your
attendance today.*

M. RANCOURT: M. le Juge, je dois signaler....

COURT SERVICES OFFICER: Order. All rise.

À l'ordre. Veuillez-vous lever.

M. RANCOURT: M. le Juge....

Your Honour....

LA SÉANCE EST LEVÉE

(10h54)

Formule 2

CERTIFICAT DE TRANSCRIPTION

*Loi sur la preuve, paragraphe 5(2)*Je, la soussignée,Leona M. Scott

certifie que

(Nom de la personne autorisée)

le présent document est une transcription exacte et fidèle de l'enregistrement de l'affaire

Joanne St. Lewis c. Denis Rancourt

dans la

Cour supérieure de justice

(Nom de la matière)

(Nom de la cour)

entendue à

161, rue Elgin à Ottawa mardi, le 24 juillet 2012

(adresse de la cour)

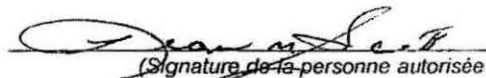
prise de l'enregistrement

0411-35-20120724

, qui a été certifié en Formule 1.

Le 20 août 2012

(Date)



 (Signature de la personne autorisée)

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

-and-

DENIS RANCOURT

Defendant

P R O C E E D I N G S
(*REFUSALS MOTION*)

BEFORE THE HONOURABLE MR. JUSTICE R. SMITH
on FRIDAY, July 27th, 2012, at OTTAWA, Ontario

APPEARANCES:

Deardon, R.	Counsel for the Plaintiff – Joanne St. Lewis
Carr Harris, B.	Agent for the University of Ottawa
Rancourt, D.	Self-Represented Defendant

(i)
Table of Contents

SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

Transcript Ordered:.....July 27, 2012
Transcript Completed:.....September 02, 2012
Ordering Party Notified:.....September 05, 2012

Thursday, July 26th, 2012

MR. DEARDON: Good morning, Your Honour.

THE COURT: Good morning.

MR. DEARDON: Just as a quick housekeeping matter,
Your Honour; I use, to take notes, an Echo Smart
pen that actually records voices as well. And
under the Courts of Justice Act, I need permission
to....

THE COURT: Permission - does it also talk to you?

MR. DEARDON: No, but it plays back and - it plays
back and you can put it on your computer and it
translates it for you too.

THE COURT: Modern technology. Now, I see Mr.
Rancourt is not present. Is that....

COURT REGISTRAR: Your Honour, I paged him about -
several times.

THE COURT: Right, you have paged him?

MR. DEARDON: Four times.

THE COURT: Four times. Now, are we within the
rules to - to - I know it was adjourned on what,
Tuesday, or this week or earlier this week?

MR. DEARDON: So, Your Honour, if I could speak to
the "No show"? Firstly, I hand to Your Honour an
email that I sent to Mr. Rancourt July 25th, at
6:51 where I say - well, I'll hand it to you first,
sorry.

THE COURT: I'm told there's also another letter
sent to Justice Hackland.

MR. DEARDON: There is, and I'll get to that in a
second, Your Honour.

THE COURT: I have not seen it, but I've heard from
the CSO that he's seeking another judge from

outside of the region.

MR. DEARDON: Correct. But can I put on the record, Your Honour, the note – the notice that I've given him that today's...

THE COURT: Yes.

MR. DEARDON: ...refusals motion is proceeding. So you see, what I just handed you, this July 25th email, I inform him, "I'm requesting that a date be assign to hear your champarty's refusal motion on July 26th, 27th, (inaudible) the 30th. A date has now been assigned by the Court and the motion is proceeding on July 26th. If you fail to show up, I will request that your champarty's refusals motion, regarding questions you asked of Professor St. Lewis, be dismissed with costs on a substantial indemnity basis."

Now in addition to having the Court assign today's proceeding to occur, Your Honour, I, out of an abundance of caution, also served Mr. Rancourt with a notice of motion that should be in the file with the affidavit of service. I'm told the affidavit of service is in the file with a notice of motion that an order goes "That the defendant's champarty refusals motion, regarding Professor St. Lewis' cross-examination on her affidavit, to be heard on July 26th, 2012, on short notice."

So he's been served, out of an abundance of caution, with a notice on short notice from me that the refusals motion, that should've been argued on Tuesday, be argued today. So it's covered on two

basis, Your Honour.

5 So I'd ask you to make an order, if that was
required, pursuant to my notice of motion that we
are proceeding on short notice if that is
necessary. I don't think it's necessary because
the Court, the Regional Senior Justice, pursuant to
my letter of July 24th, has assigned the refusals
motion to be argued today.

10 And I note, Your Honour, that Mr. Doody reminded me
that there is a rule on abandoned motions, Rule
37.09(2):

15 "A party who serves a notice of motion and
does not file it or appear at the hearing,
shall be deemed to have abandoned the
motion unless the Court orders otherwise."

20 So, Your Honour,....

THE COURT: But this is simply a hearing on the
refusals - these are refusals by your client, is
that right, Professor St. Lewis?

25 MR. DEARDON: Yes, on the cross-examination on her
affidavit in the champarty motion.

THE COURT: Right. So it's your refusals that
you're bringing the motion on?

MR. DEARDON: He's bringing the motion. It's his
motion.

30 THE COURT: He brought this motion?

MR. DEARDON: Yes, yes.

THE COURT: Okay, so he brought a motion seeking an

order that the – the questions be answered.

MR. DEARDON: By Professor St. Lewis on a cross-examination. And that was supposed to be argued on Tuesday before Justice Beaudoin. Justice Beaudoin had set that date, um, weeks ago, that the refusals be heard.

What we have had occur, Your Honour, in terms of refusals motions by the defendant in the champarty motion, is Mr. Doody, on June the 20th, dealt with Mr. Rancourt's refusals motion regarding President Rock; Board of Governors Chair, Robert Giroux; and a lawyer named Celine Delorme.

We were supposed to argue Professor St. Lewis' refusals as well on that day, but we ran out of time. So Justice Beaudoin then adjourned that to today because – or to Tuesday rather, July 24th, because he had already set that date for hearing refusals arising out of the examinations for discovery in the liable action.

So he was supposed to be ready to go to argue his refusals motion on July 24th, that was a carryover from June the 20th, and then he did what he did. And I want to speak to Costs thrown away, after we finish with this, to Your Honour.

So he's been notified the date was assigned. He's been served with a notice of motion. He's not showing up here. I have no – I'm not gonna even speculate why not.

5 But Your Honour asked me, did he write a letter to Regional Senior Justice Hackland? Ad he also wrote a letter to Chief Justice Winkler as well; which, if you give me a second, Your Honour, I'll try to pull a copy.

THE COURT: Does he mention anything about an adjournment today or is that in his letter?

10 MR. DEARDON: We got this late last night. What I can tell you, Your Honour, is he never notified us that he wasn't gonna show up today.

15 I do have one additional copy of the letter that he sent to Chief Justice Winkler on July 25th that we got late yesterday. But I don't appear to have an extra copy of his July 25th letter to Regional Senior Justice Hackland. And if I could, Your Honour, I'll review it to see if he said he wasn't gonna show up.

20 MR. DOODY: I - I have a copy of that letter. I'll give you my copy. I'm sure Mr. Deardon will share his with me.

25 MR. DEARDON: Oh, yes, and prior - prior to the email that I handed up to Your Honour, um, I had an exchange with Mr. Rancourt where he - he - this was after the Court assigned today to hear his refusals motion involving Professor St. Lewis; he then said, I'll quote, "I have - unfortunately, due to a medical appointment that has been scheduled in advance, I'm not available for a hearing on July 30 26th. Kindly, please advise all parties about available court dates for a bilingual hearing in

the month of August."

THE COURT: So this is a letter he has sent?

MR. DEARDON: He sent an email to me and to Mr. Doody as well, and the trial coordinator. This was all brought to the attention of Justice Hackland and Justice Hackland assigned today's date.

THE COURT: Notwithstanding that he was not available on this date today.

MR. DEARDON: Well, we - he - he says, Your Honour, in the letter that was just handed up to you, on the second page, or the fourth page rather, the signing page, he says: "On July 24th I'd advised Mr. Labaky and the other parties that I'm unavailable July 26th due to a medical appointment. A copy of my email to that effect is attached." And that's the email I've just referenced.

But I trumped that by indicating to him a date had been assigned and served him. And, of course, he hasn't put any medical evidence. He just - he - in my respectful submission, Your Honour, he just made up an excuse. He wasn't gonna show. And he wants to put everything off until August. And it's just unacceptable.

THE COURT: So this is in response to your letter, is that right? Or is this his letter before you wrote? When is the....

MR. DEARDON: This is his July 25th letter. His email was July 24th at 4:32 where I - I had said I'm confirming, in response to Mr. Labaky indicating that we had July 26th as a date assigned, I confirmed "The champarty's refusals

motion will be argued July 26th at 10:00 a.m.” And then he countered with his email of 4:32 saying, “Unfortunately, due to a medical appointment that’s been scheduled in advance, I’m not available”.

That’s not good enough, in my respectful submission, Your Honour. He flaunts at the Court. He doesn’t say when his medical appointment is. He doesn’t have a medical certificate. We aren’t supposed to be proceeding for more than 1.5 hours today, if, on the seven issues of refusals. And he’s just – he’s just thumbing his nose at the Court by not showing up today, in my respectful submission.

THE COURT: I’d be reluctant to dismiss everything if he’s not available due to a medical appointment. If he had raised that with the Court, an adjournment would be granted. I – I recognize that he’s....

MR. DEARDON: Well, it was – it was raised, Your Honour. It was raised....

THE COURT: But has that been raised by Justice Hackland?

MR. DEARDON: And Justice Hackland assigned the date today anyway.

THE COURT: Today’s, notwithstanding that he had a medical appointment scheduled for today?

MR. DOODY: The fourth page of the letter to the Regional Senior Justice, Your Honour, subparagraph (b), “On July 24th, I have advised Mr. Labaky and the other parties that I am unavailable on July 26th, 2012, due to a medical appointment”.

5 THE COURT: Well, the - I'm very - I'm reluctant to
dismiss the action completely on a - I don't know
exactly what's happened. I know that Justice -
some - in my view, improper allegations were made
or subjects raised [sic] concerning the death of
Justice Beaudoin's son and caused him to recuse
himself from this matter.

10 I don't know very much about it other than the
leave to appeal that I dealt with you and Mr.
Rancourt and Mr. Hickey on some - what, several
months ago. So the....

15 MR. DEARDON: Your Honour, what he's doing is
"Gaming" the system is what he's doing.

THE COURT: No, no, I - I....

MR. DEARDON: The Court knew that he....

20 THE COURT: I wouldn't - I'm just thinking of
another solution. The - he has a medical
appointment today. We could adjourn. Are you
available tomorrow?

25 I'm on holidays. I'm going on holidays for the
month of August. I should tell you that as a - as
a - so I'm not sure. You have your motion, what,
the end of August, is that....

MR. DEARDON: Yeah, August 29th is when the
champarty motion is scheduled to be heard on its
merits.

30 THE COURT: So I don't know who that will be. But
it will be - it won't be me on the 29th. So - but
I'm here tomorrow. I could be here next week.

MR. DEARDON: Well, I'm available tomorrow, Your

Honour.

THE COURT: Okay, so if he has a medical appointment today; if we adjourn it until tomorrow at, uh, let's say nine-thirty. Is that agreeable, Mr. Doody?

MR. DOODY: I'm not necessary, Your Honour.

THE COURT: Okay.

MR. DOODY: I just have a couple things to say.

THE COURT: Right.

MR. DOODY: I only came down here because I wasn't sure what Mr. Rancourt was going to do today. But I'm - as I'll indicate I'm not necessary....

MR. DEARDON: So, yes, nine-thirty, Your Honour.

THE COURT: So I'll adjourn it to nine-thirty. Give him notice by fax that it's been adjourned to that date due to his medical appointment. That would accommodate his medical issue. And the - it's his motion?

MR. DEARDON: It's his motion.

THE COURT: So that - and if he does not attend, then the consequence will be that his motion will be dismissed. But it doesn't necessarily - I wouldn't necessarily, subject to argument, dismiss the whole ship (ph), champarty....

MR. DEARDON: Oh, no, I'm only asking that his - his motion...

THE COURT: His refusals motion...

MR. DEARDON: ...for the refusals be dismissed...

THE COURT: ...be dismissed. Okay.

MR. DEARDON: ...because he didn't show up.

THE COURT: So he still has his champarty motion on the 29th, or whatever, of August. And he might be

happy that it's not me presiding. But, anyway,
that's "C'est la vie...

MR. DEARDON: Well, he's not happy, Your Honour,
just...

THE COURT: ... "C'est la vie, c'est la guerre".

MR. DEARDON: ...go on the record. He's - he's -
he doesn't want any Eastern Region...

THE COURT: I've seen that.

MR. DEARDON: ...Judge...

THE COURT: I've seen that.

MR. DEARDON: ...to be hearing - but I think the
time has come that Mr. Rancourt be informed that
just because he writes a letter like he wrote....

THE COURT: I'm not inclined - I'll hear argument
on that issue at the - if it's raised. But - and
if the - whoever he's written to, if they feel that
an out of jurisdiction judge should be hearing
these matters, well, there'll be no objection from
me.

But I'm not inclined to that view. Litigants don't
get to choose. And I don't feel I have any
conflicts with Mr. Rancourt, that I'm aware of, so
that's my thinking. But subject to hearing
argument on - by Mr. Rancourt and whoever else may
make submissions on that point. So let's adjourn
it to nine-thirty tomorrow.

MR. DEARDON: Now what about costs for our
appearance, Your Honour, today? He - he didn't....

THE COURT: Costs?

MR. DEARDON: He didn't indicate he wasn't showing
up other than to say, "I had a medical

5 appointment". I mean, we're talking conduct post
him being told it was assigned. Post him being
served with a notice of motion that this motion
would be heard today on short notice. And he
didn't show up.

THE COURT: What are you seeking for costs -
seeking for costs?

MR. DEARDON: Um,....

10 THE COURT: You know what? Costs will be dealt
with tomorrow morning at nine-thirty.

MR. DEARDON: Okay.

THE COURT: Mr. Doody, what are you seeking for
costs?

15 MR. DOODY: Your Honour, I - I'd be seeking \$500.

THE COURT: Okay.

MR. DEARDON: And I'll do the same, Your Honour.

THE COURT: Five-hundred dollars each?

MR. DEARDON: Yes.

20 THE COURT: Okay. It'll be dealt with.

MR. DOODY: Your Honour, if I could just take two
minutes, because I'm - I'm not available tomorrow.
I was supposed to be out of the country this week,
but I'm only here - and to indicate, Mr. Rancourt
thought I wasn't gonna be here; I'm only here
25 because I - a new matter I've been retained on, I
had to do some - some preparatory work before I do
get to my holidays.

30 But the - the difficulty that I'm in is Mr.
Rancourt has written this letter to the Regional
Senior Justice setting out certain things, which,
in my respectful submission, ought to be responded

to. And it is not my practice to write to judges.
It's my practice to make submissions and remarks in
court.

5 And so if I could just – with Your Honour's
indulgence, take less than one minute to say a
couple of things about what Mr. Rancourt said in
that letter?

10 Your Honour, in my submission, we're here as a
result of a malevolent, baseless, and contemptuous
attack upon a judge of this Court, and a
transparent attempt by Mr. Rancourt to avoid the
effect of an unfavourable judicial ruling.

15 Mr. Rancourt's motion seeking an order that the
witnesses' whose affidavits were filed by the
University of Ottawa be required to answer
questions or produce documents objected to was
20 dismissed by Justice Beaudoin from the bench on
June 20th. He lost his motion against my client,
the University of Ottawa.

25 The transcript, which has been ordered but not yet
ready, will show that those rulings were made. It
will also show that Mr. Rancourt said words to the
effect of, "I have no case now". Mr. Rancourt
admits that the rulings were made in paragraph 13
of his letter of yesterday to Justice Hackland
30 where he wrote, "Justice Beaudoin made rulings from
the bench".

Mr. Rancourt could have sought leave to appeal that decision within seven days as required by the rules. He did not do so. Instead, he waited until July 24th, when he believed I would be out of town as I had advised Justice Beaudoin on our last court appearance. And with no notice whatsoever, Mr. Rancourt commenced a vituperative attack upon a judge of this court.

In my submission, there is absolutely no basis for any suggestion that Justice Beaudoin was in a position of reasonable apprehension of bias because his late son worked at my law firm, or because a scholarship was established in his memory at the university.

There is, however, every basis to suggest that this submission was a calculated attempt to (inaudible) Justice Beaudoin into a negative reaction. This caused Justice Beaudoin, in an illustration of his excellent judicial character, to recognize that Mr. Rancourt's personal attack and linkage of this case to his deceased son had actually made him unable to deal with Mr. Rancourt in a judicial manner.

So Mr. Rancourt succeeded in having Justice Beaudoin no longer rule with respect to his case. But he ought not to be rewarded for his abusive and contemptuous behaviour towards a judge of this court who has spent his entire career serving the judicial system in this province.

His motion was dismissed. He has missed the appeal period. The underlying champarty motion, in my respectful submission, must be decided in accordance with the original schedule or Mr. Rancourt will have successfully put off the judgment day yet again.

And, Your Honour, I will be unavailable tomorrow. But I'm not needed, because it only deals with the part - with Mr. Rancourt's motion against Mr. Deardon's client.

MR. DEARDON: Your Honour, if I may follow-up on what Mr. Doody said please? As he told you, he - he wasn't here on Tuesday. And he had informed the Court back on June 20th. And Mr. Rancourt fully knew that. I - I am....

THE COURT: Mr. Doody was not here on Tuesday?

MR. DEARDON: Mr. Doody was...

THE COURT: Okay.

MR. DEARDON: ...not here on Tuesday. And - and what I'm describing....

THE COURT: But he didn't have to be here because he - he'd already dealt with his matters.

MR. DOODY: Exactly.

THE COURT: So there's no real need to be here.

MR. DEARDON: Well, he was also supposed to be on holidays as well, but then other things came up, workwise, so. But Mr. Rancourt knew that and what I'm describing as an "ambushed attack" that, without notice, no record whatsoever, without telling us in an email that he was going to personally attack Justice Beaudoin on Tuesday

morning, knowing that the University of Ottawa's counsel wasn't here, was wholly improper.

5 And everything he did on Tuesday, I described it as, "Sickening", Your Honour. What he said about Judge Beaudoin and the use of his - his son's death to provoke Justice Beaudoin as a human being and as a father to have to recuse himself (ph).

10 I'm seeking Costs thrown away because Judge Beaudoin said, when he did recuse himself because of the personal attack on him, that another judge would deal with the costs of that date.

15 I'm assuming, Your Honour, that will be you, because you're following up on...

THE COURT: I....

MR. DEARDON: ...the refusals motion that we were supposed...

20 THE COURT: Yes.

MR. DEARDON: ...to argue?

THE COURT: Yes.

MR. DEARDON: So, Your Honour, I have - I have prepared a Costs thrown away outline.

25 THE COURT: So costs - costs for Tuesday?

MR. DEARDON: Um, yes.

THE COURT: You're seeking costs...

MR. DEARDON: Yes, costs thrown away.

30 THE COURT: Well, costs for the Tuesday motion that was continued....

MR. DEARDON: Yes, and Judge Beaudoin said another judge would have to deal with that.

THE COURT: Okay.

MR. DEARDON: And "That" I'm now hearing is you. I prepared a costs thrown away outline of the plaintiff for preparing for the three motions and the attendance that were supposed to be argued on Tuesday. And I'll hand it up to Your - Your Honour now and I will have it served on Mr. Rancourt today so that we can deal with it...

THE COURT: Tomorrow.

MR. DEARDON: ...tomorrow.

THE COURT: Yes.

MR. DEARDON: In short, Your Honour, my - my argument is that the - that with an "Anarchist", as Mr. Rancourt describes himself, the ends justify the means. And the end game here was to get the refusals motions on Tuesday adjourned.

And it didn't matter to him what means he used. And he went to the lowest depths that any human being could do by saying the things that he said to Justice Beaudoin. And he - and you'll see in my submissions, I'm arguing that his conduct was contemptuous because he ambushed us all.

He didn't have a notice of motion before the Court. He had no material before the Court. And all he had to do was inform the Court, "I'm gonna bring a biased motion". But no, he continues and puts material on the record like - like the Ottawa Citizen article that he was referring to, and the grief of Justice Beaudoin, knowing it was completely intentional what he was doing to achieve

his end game, which was to get the adjournment and delay this liable action as long as he can.

5 And what's amiss in all of this, Your Honour, is he called Professor St. Lewis a "House Negro" and she is suffering damages every day that his "House Negro" articles stay up on his website, because we're seeking an injunction to get them down. And his delay is deliberate.

10 And we can't lose sight of the fact that this is a liable action where somebody is egregiously defamed. And he plays these games. He games the system, in my respectful submission, Your Honour, by - by doing what he did on Tuesday.

15 And that's why I've prepared this cost thrown away outline on a full indemnity basis because of what he did.

20 So I will, Your Honour, serve Mr. Rancourt of this copy of this Costs thrown away outline that I've provided to you. And I will serve him a notice by fax; I'll write him a letter by fax saying that the refusals motion involving Joanne St. Lewis' cross-examination will be heard at nine-thirty tomorrow before you.

25 THE COURT: Nine-thirty tomorrow. And I would intend that it proceed.

30 MR. DEARDON: Oh, yeah, can it....

THE COURT: The medical appointment is a reason that I would've granted an adjournment. And I

grant you that well, there's no certificate from a doctor, but I would intend to proceed tomorrow.

MR. DEARDON: Your Honour, I forgot....

THE COURT: It's my....

MR. DEARDON: I forgot to tell you that Justice Beaudoin allowed us to email Mr. Rancourt as service.

THE COURT: And I would allow service by email as well. And it will be on short notice.

MR. DOODY: Okay.

MR. DEARDON: Do you want me to mention that you took into account the medical appointment that he said he had today?

THE COURT: That is the reason. Yes, the reason for granting the adjournment is he - his letter, stating that he had a medical appointment and could not attend. He was here on Tuesday.

Whether he could've cancelled that medical appointment, or should've cancelled the medical appointment, it's a separate issue. But if any other litigant had made the same request, I would've granted adjournment for that reason, so he will get the same benefit. But I would intend to proceed tomorrow, whether...

MR. DEARDON: Okay, thank you, Your Honour.

THE COURT: ...whether he's here or not.

MR. DEARDON: Thank you, Your Honour.

THE COURT: Okay.

THE COURT IS ADJOURNED

Form 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

I, RENEE COMMODORE certify that this document is a true and accurate transcript of the recording of J. St. Lewis v. D. Rancourt, in the Superior Court of Justice, held at 161 ELGIN ST. OTTAWA, ONTARIO, taken from Recording(s) CD #0411-36-20120726, which has been certified in Form 1 by A. Pressman.

SEPTEMBER 02, 2012
(Date)

RENEE COMMODORE
COURT REPORTER

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

-and-

DENIS RANCOURT

Defendant

P R O C E E D I N G S
(*REFUSALS MOTION*)

BEFORE THE HONOURABLE MR. JUSTICE R. SMITH
on FRIDAY, July 27th, 2012, at OTTAWA, Ontario

APPEARANCES:

Deardon, R.	Counsel for the Plaintiff – Joanne St. Lewis
Carr Harris, B.	Agent for the University of Ottawa
Rancourt, D.	Self-Represented Defendant

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SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

Transcript Ordered:.....July 27, 2012
Transcript Completed:.....September 02, 2012
Ordering Party Notified:.....September 05, 2012

Friday, July 27th, 2012

DANIEL RENAUD: INTERPRETER SWORN - French/English

ODETTE BORRIS: INTERPRETER SWORN - French/English

5

THE COURT: Well,....

MR. DEARDON: Your Honour, can I...

THE COURT: Mr. Deardon, shall you start? We have
a motion also for Mr. Rancourt.

10

MR. DEARDON: And I wanted to speak to that just
briefly, Your Honour, before Mr. Rancourt speaks.
Um, I wish to make submissions to you on Mr.
Rancourt's notice of motion about why you shouldn't
be dealing with it today. I mean, Mr. Carr Harris
also has submissions on a jurisdictional point, uh,
with respect to why we should not be dealing with
this motion and we should be dealing with the
motion you did schedule today, which was the
refusals motion.

15

20

THE COURT: Okay, so let's....

LE TRIBUNAL: On va procéder avec Mr. Deardon
premièrement, et puis après ça votre motion. Est-
ce que j'ai juridiction d'entendre cette demande
vraiment, c'est ça la question.

25

M. RANCOURT: Donc, j'ai - j'ai une motion qui est
devant la cour, Monsieur le Juge,...

LE TRIBUNAL: Oui.

30

M. RANCOURT: ...et que si elle n'est pas entendu
en premier, euh, elle va devenir, en Anglais on
dit, « moot ». Euh, il y a des éléments dans la
motion que j'ai mis devant la cour qui seront
rendue, euh, inutile si on ne peut pas la faire

avant cette autre motion.

LE TRIBUNAL: Bon, c'est pour ça qu'on va avoir des représentations sur est-ce que j'ai juridiction d'entendre votre motion premièrement. C'est une sorte d'appel si je peux voir l'appel – la décision de Juge Beaudoin.

M. RANCOURT: Mais, Monsieur le Juge, j'ai eu aucune notice que ma motion allait être, euh – allait être...

LE TRIBUNAL: Non, non, non, on va...

M. RANCOURT: ...mis....

LE TRIBUNAL: ...procéder, est-ce que j'ai juridiction à entendre votre motion.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est la première question. Si la réponse est « oui », je vais l'entendre; si c'est « non », bon je ne l'entendrais pas. Puis on va procéder avec votre motion sur les « refusals », « refusals motion ».

M. RANCOURT: Monsieur le Juge, je veux simplement mettre sur le procès-verbal,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...que je n'ai eu aucune notice sur cette objection sur la base d'une juridiction, aucune.

LE TRIBUNAL: Okay, mais on va l'entendre, c'est votre motion. C'est votre motion? Première chose,...

M. RANCOURT: Il y a ma motion, mais ma motion ne touche pas la question de juridiction. C'est la première fois que j'en entends parler.

LE TRIBUNAL: Bon, c'est la juridiction de votre

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motion, donc,...

M. RANCOURT: Oui.

LE TRIBUNAL: Donc, si il n'y a pas de juridiction d'entendre votre motion, donc, je ne pourrais pas l'entendre. So ça c'est une question de base, ça vient avant, même, votre motion.

M. RANCOURT: Mon seul,...

LE TRIBUNAL: Okay.

M. RANCOURT: ...point, Monsieur le Juge,....

LE TRIBUNAL: Okay, puis....

M. RANCOURT: Mon seul point, Monsieur le Juge, c'est que je - j'ai - je n'ai pas eu de temps de faire de recherches ou de répondre à la question de juridiction parce que j'ai eu aucune notice.

LE TRIBUNAL: Okay, bien c'est votre motion, c'est leurs - leurs représentations qu'ils vont faire. Je ne sais pas qu'elle représentations qu'ils vont faire. J'imagine, peut-être, que - ils ont indiqué que je n'avais pas de juridiction de l'entendre. Si je n'en ai pas de juridiction, ça ne donne rien d'entendre quelque chose si je n'ai pas de juridiction.

M. RANCOURT: Oui, mais vous avez....

LE TRIBUNAL: C'est une question de base.

M. RANCOURT: Il faut - vous devez entendre mes soumissions par rapport à juridiction.

LE TRIBUNAL: Oui.

M. RANCOURT: Et j'ai eu aucune chance de préparer ça et aucune chance et aucune notice.

LE TRIBUNAL: Okay. Mais c'est vous qui a signifier cette motion?

M. RANCOURT: Oui.

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LE TRIBUNAL: Donc, quelqu'un qui signifie une motion doit être prêt pour l'argumenter. Si non, c'est une - un processus qui - qui marche pas. Donc, c'est vous qui a - qui a mis cette motion. Donc,...

M. RANCOURT: Je suis prêt à argumenter...

LE TRIBUNAL: ...il faut que vous....

M. RANCOURT: ...la motion.

LE TRIBUNAL: Oui.

M. RANCOURT: Mais....

LE TRIBUNAL: Mais la - une partie de la motion c'est juridiction. C'est fondamental, finalement. Okay, Mr. Deardon?

M. RANCOURT: Non, je - je - je - je vais...

LE TRIBUNAL: Merci.

M. RANCOURT: ...procéder.

LE TRIBUNAL: Oui.

M. RANCOURT: Mais...

LE TRIBUNAL: Oui.

M. RANCOURT: ...sous objection.

LE TRIBUNAL: Oui. J'ai entendues ça.

M. RANCOURT: Okay.

THE COURT: Mr. Deardon?

MR. DEARDON: Your Honour, thank you. My - mine aren't, uh, jurisdictional points of legal argument per say. What...

THE COURT: So they are not?

MR. DEARDON: ...the defendant, mine - Mr. Carr Harris will be addressing that issue, okay.

THE COURT: Oh, okay.

MR. DEARDON: He's going to be addressing that issue. But I have some very valid points, in my -

in my respectful submission, as to why this notice that was served on us late yesterday afternoon; and he's seeking short notice or short service, which I'm gonna argue he shouldn't be granted. But he's looking to assign a new case conference judge from a judicial region other than the East Region.

THE COURT: I don't have jurisdiction to make that decision. That's not my decision. If someone decides that, um, you know,...

M. RANCOURT: Monsieur le Juge,....

THE COURT: ...as I said previously - il n'aurait pas d'objection de ma part.

M. RANCOURT: Je comprends, Monsieur le Juge.

THE COURT: Mais,...

M. RANCOURT: Je m'objecte à cette caractérisation de ma motion. Ma motion ne demande pas cela. Ma motion demande d'arrêter, euh, les autres motions avant que cette question la puisse être déterminé.

LE TRIBUNAL: Okay.

M. RANCOURT: Mais la motion ne demande pas cette question-là.

LE TRIBUNAL: Merci. On va entendre, M. Deardon.

MR. DEARDON: Well, as I was saying, Your Honour, Mr. Rancourt is seeking an order, in paragraph 5, that "No further motions in the action be heard until Regional Senior Justice Hackland has responded to his letter of July 25th" And then he lists, A to E, and that's what I was, uh - was dealing with. He wants a case management judge from outside the East Region. He wants things to be done by videoconference or telephone conference. He wants to set aside Judge Beaudoin's rulings. He

5 wants a de novo hearing of the defendant's refusal motion. And, um, he - he wants Justice Beaudoin's court statements struck from the record after he's finished using them. In other words, "He can dish it out, but he can't take it".

10 All of this, Your Honour, in my submission, the - the accusations about Justice Beaudoin are completely irrelevant to the refusals motion that you adjourned to be heard today.

15 Let's get the facts straight here, Your Honour. The motion that's before the Court today, the refusal motion, is about questions asked by the defendant during his cross-examination of Professor St. Lewis. And the hearing of that refusals motion was assigned by this Court to be heard yesterday. Your Honour adjourned the hearing of that motion today.

20 And Justice Beaudoin has never ruled on the questions in the refusal motions before you today. He's only ruled on three of the deponents that the University of Ottawa put in, as part of their motion record, to oppose the champerty motion.

30 So all accusations that Mr. Rancourt is making against Justice Beaudoin are absolutely no reason for preventing this Court from hearing his refusals motion with respect to the questions he asked of Professor St. Lewis.

M. RANCOURT: Euh, Monsieur le Juge,...

MR. DEARDON: Secondly,....

M. RANCOURT: ...je veux m'objecter à ce qu'il....

MR. DEARDON: Will you please?

LE TRIBUNAL: Non, non, non.

M. RANCOURT: C'est....

LE TRIBUNAL: Vos objections à la fin. Si non, on ne finira jamais cette matière.

M. RANCOURT: Mais....

LE TRIBUNAL: Merci.

M. RANCOURT: Mais...

LE TRIBUNAL: Merci.

M. RANCOURT: Mais une objection rapide.

LE TRIBUNAL: Non, non, non. On a déjà sa - je vais entendre - mettre une note....

M. RANCOURT: Il - il argumente...

LE TRIBUNAL: Je fais faire une note....

M. RANCOURT: ...la motion, Monsieur le Juge.

LE TRIBUNAL: Non, non. Non, non.

MR. DEARDON: No, I'm not.

LE TRIBUNAL: Même si il l'argumentait, je vais vous entendre, c'est sure, avant de faire aucune décision.

MR. DEARDON: So, Your Honour, that's - that's my first point. Is that the accusations....

THE COURT: You want the adjournment - you want this adjourned then?

MR. DEARDON: No.

THE COURT: You don't want his motion adjourned?

MR. DEARDON: No, well I want you - there's - there's no basis....

THE COURT: He wants it....

MR. DEARDON: There's no basis for using his motion

to stop the refusals motion from being heard.

THE COURT: Okay, but I think his motion is, basically, to stop....

MR. DEARDON: To not....

THE COURT: To stop the hearing of the refusals motion.

MR. DEARDON: Correct. And I'm saying....

THE COURT: Because he wants an out of town judge, basically, he wants someone else to be assigned.

Now,...

MR. DEARDON: Right.

THE COURT: ...will that be, um - I've been assigned as the case management judge to replace Justice....

M. RANCOURT: C'est la premièrement fois que je suis informer de ça, Monsieur le Juge.

THE COURT: Okay. So - by Justice Hackland. So that's why I'm here if there's any question about that. So - and that is - I'm prepared to - or if, uh, Justice Hackland or Justice Winkler, or whoever you - I don't think Justice Winkler would be involved in this. It would be Justice Heather Smith, who's the Chief Justice of our court. But if they wish to have an out of - I mean, I would hear argument on that if you feel that I'm biased against you, because I dealt with your leave to appeal. I don't think that's grounds. But I mean, anyone can bring a motion to have a judge recuse himself. It doesn't mean I will recuse myself, okay, but you are free to bring that motion. That is if there are grounds, I'll listen to it, hear submissions, and decide. But, uh - but that's not

before me at this point.

MR. DEARDON: So my - my point, Your Honour, is simply this: It's that, yes, he's trying to stop the arguing of his refusals motion with respect to Professor St. Lewis' cross-examination. And he has, in his notice of motion, his grounds; accusations about Justice Beaudoin. And my simple point....

THE COURT: I'm not gonna - I'm not gonna deal with those accusations...

MR. DEARDON: Okay.

THE COURT: ...against Justice Beaudoin. Uh, I know some mention was made yesterday of the statements. I know you're seeking costs. And I think what I will do is order a copy of the transcript of what happened. And I'd hear submissions by both of you on the cost aspect and - so I know exactly what was said by whom.

COURT REPORTER: Your Honour?

MR. DEARDON: May I say...

THE COURT: Yes.

MR. DEARDON: ...something, Your Honour?

COURT REPORTER: I'm sorry. I just wanted to let you know the transcript has been ordered. So I can request a second request.

THE COURT: Okay, if you would.

MR. DEARDON: So that - that was my first point, is if Your Honour was somehow going to consider the accusations in this motion of Mr. Rancourt.

THE COURT: Well, I can't. I wasn't present. You know, you need evidence, uh,....

MR. DEARDON: Well, that's my next point, Your

5 Honour. The second thing he says is that well, in paragraph 16 in his motion, you know, um, he's - he's - let me read it, uh, he said, "Given the central place of the University of Ottawa Law School in the Ottawa legal community, a reasonable apprehension of bias is nearly impossible to be avoided with a bilingual judge from the East Region having no connections with the University of Ottawa or Borden Ladner Gervais, or Gowlings, and no ties to Allan Rock.

10 Now, Your Honour, you do not have a scintilla of evidence before you today to find that - that yourself or any other of the East Region judges who had been disparaged by that paragraph and by the submissions of Mr. Rancourt to support that proposition. He's filed no affidavit, none.

15 What it is, is a deliberate attempt to delay the hearing of the refusals motion this morning and delay the hearing of the champerty motion. And that, as you heard me say yesterday, in my respectful submission, is he is gaming the system by making this request in his motion to stop all the proceedings that are going on in the champerty motion and the liable action. And he should not be allowed to do that, in my submission, Your Honour.

20 There is no reason why you can't hear the refusals motion this morning, as it's been adjourned to be heard, um, today, because you have absolutely no evidence before you to not do that. This motion is

5 unsupported by any affidavit evidence and that
should end it. That's - that's why I'm making this
preliminary objection. He's got no evidence, so it
should - we should just be proceeding with the
refusals motion.

M. RANCOURT: Monsieur le Juge?

LE TRIBUNAL: Oui.

M. RANCOURT: Monsieur le Juge,....

10 LE TRIBUNAL: Maitre - juste avant de vous
entendre, peut être M. Carr Harris, je vais
entendre M. Carr Harris, puis là je vais vous
entendre.

15 M. RANCOURT: Je - j'ai eu mal à comprendre,
Monsieur le Juge, pourquoi M. Deardon, on lui a
permis d'argumenter sur ma motion en premier.

LE TRIBUNAL: C'est une question de....

M. RANCOURT: Ce qu'il vient de faire.

20 LE TRIBUNAL: Oui, c'est une question de
juridiction que j'avais compris. Finalement, ce
n'est pas juridiction vraiment. Je pense que c'est
un manque de pertinence. Je ne sais pas
exactement.

M. RANCOURT: Mais, il....

25 LE TRIBUNAL: En général, je pense qu'il a dit que
ce n'était pas à moi de décider ses choses ici,
peut-être, et puis...

M. RANCOURT: Mais, Monsieur le Juge,....

LE TRIBUNAL: ...je crois peut-être qu'il a raison.

30 M. RANCOURT: Monsieur le Juge, il vient
d'argumenter ma motion avant que j'ai la chance de
parler sur ma motion.

LE TRIBUNAL: Non, mais moi - mon politique - ma

politique c'est d'entendre les deux côtes. Donc, comme vous le savez, je vais vous entendre.

M. RANCOURT: Mais, il y a - il y a une procédure, Monsieur le Juge,...

LE TRIBUNAL: Je veux venir à la fin.

M. RANCOURT: ...et donc....

LE TRIBUNAL: Je veux venir à la fin de cette motion parce que si je vous entends, et puis là j'entends M. Carr Harris, et puis là je vais vous entendre encore une fois pour répondre à M. Carr Harris. Donc, j'essaye de le faire dans une manière efficace, aussi efficace qu'on peut, pour la compléter, euh - cette matière. C'est ça mon but, si ce n'est pas claire. Je veux - je veux venir à la fin et puis vous entendre. C'est sure que je vais vous entendre. Ce n'est pas fini. Ce n'est pas fini.

M. RANCOURT: Je - je veux simplement signaler mon objection sur ce qu'il vient de se passer.

LE TRIBUNAL: Okay. C'est bien.

COURT INTERPRETER: Your Honour, the interpreter would like your attention. We're having a hard time hearing Mr. Rancourt when he chooses not to use the podium.

THE COURT: Okay.

COURT INTERPRETER: If Mr. Rancourt is going to use - speak to the Court standing up, can we ask that the microphones be approached closer to Mr. Rancourt, because we're not getting his voice easily. Excellent, maybe both of them, Mr. Rancourt? Thank you. Thank you very much.

COURT REPORTER: There's only one channel, so we

can't do a whole lot of....

COURT INTERPRETER: Very good. My apologies for the interruption, Your Honour.

THE COURT: Okay, thank you. So, Mr. Carr Harris? I'm not sure if you have - I wasn't expecting Mr. Doody, he said he wouldn't be attending today.

MR. CARR HARRIS: Uh, Mr. Doody, I'm filling in for Mr. Doody. He received this motion, uh, last evening, just as he was going out the door on a well-deserved vacation. And he asked me to come down this morning and - and make - take the position that he would've taken had he been here. And it simply is this: And - and I'd like to have a moment to express it.

MR. CARR HARRIS: If this motion of Mr. Rancourt's is to continue at all, it should continue without paragraphs 5(c) and 10. Paragraph 5(c) reads, this is, again, Mr. Rancourt's motion of this morning, "An order that no further motions in this action be heard until Regional Senior Justice Hackland has responded to the defendant's letter of July 25, 2012, in regards to and going to:..." and going to (c), "...setting aside the rulings and/or determinations from the bench of Justice Beaudoin from the June 20th, 2012 hearing. Motion adjourned. And the defendant's refusals motion and the defendant's maintenance and champerty motion".

And then paragraph 10 reads, "On June 20th, the hearing of the defendant's refusals motion was not completed. Although Justice Beaudoin made rulings from the bench, including to find the defendant's

expert's affidavit inadmissible on technical grounds, to not allow the defendant to cross-examine the University's (inaudible) for the motion; to not allow several of my refusal requests. No endorsement or written reasons and/or order were provided. The judge has recused himself on the motion".

So if I may, I'll just take a moment of your time to tell you our position that those orders, with respect to....

THE COURT: But I have no jurisdiction to set aside another fellow judge's order.

MR. CARR HARRIS: In the loss....

THE COURT: You have to appeal. You have to appeal, leave to appeal, same process.

MR. CARR HARRIS: That's about...

THE COURT: So I - I don't....

MR. CARR HARRIS: ...what I was gonna take 15 to 20 minutes to....

THE COURT: Okay. Oh, it doesn't take that long I don't think. I don't have jurisdiction to set aside motions, nor is there - anyway, I'm not sure - I'm not sure on what basis that I would be - I have no intention of doing that.

MR. CARR HARRIS: Well, uh - it - it....

THE COURT: Today or, frankly, anytime. But, absence of some - some other - something I'm missing.

MR. CARR HARRIS: Well, in my respectful view, you're not missing anything. the law is clear and I brought it with me that, except for significant

5 matters which do not include costs, the - if the pronouncements are made, the matter is final and subject to appeal, whether or not it's been reduced to writing. And that's been clear in many jurisdictions in this province and across the country for a long time.

10 So Mr. Rancourt will have his remedies when the decision comes out. I presume Justice Beaudoin is going to write the - the writ (ph) - the, uh, if he is gonna write anything. He's already made the pronouncements, that's clear.

15 So what I'm specifically asking for is that the motion, if after you've heard from everybody, is to continue in any form, that these sections be removed because there's no jurisdiction.

20 The reason I'm asking they be removed is because the next time it comes up, if they're still in there, we have to be down there making the same argument when, as you have pointed out, there's no jurisdiction for them in the first place. And, right now, you're dealing - we're - as far as my - the University of Ottawa's clients are concerned, the refusals motion is over and done.

25 THE COURT: Because yours is finished, but Mr. Deardon's is not, is that right?

30 MR. CARR HARRIS: His is not. But they're basically bifurcated the motion on the refusals because there are lots of questions and lots of refusals. Thank you.

THE COURT: Thank you. M. Rancourt?

M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: Peut-être on devrait répondre,
5 premièrement, a la position de Maitre Carr Harris.
Je suis d'accord, je ne suis pas en appel ici. Il
n'y a pas de motion pour permission de faire appel.
Je n'ai pas d'autorité de rejeter une ordonnance
d'un autre juge.

10 M. RANCOURT: Monsieur le Juge, je suis très
préoccupe par ce que vous venez de dire. Parce
qu'à mon sens, ca - ça montre - ca pointe vers une
crainte raisonnable de partialité, parce que vous
n'avez pas entendue mes arguments et vous avez déjà
15 fait votre décision par rapport à ce point.

LE TRIBUNAL: J'ai même....

M. RANCOURT: Sans entendre mes arguments.

LE TRIBUNAL: Non, non. Même - non, non, non.
Sujet à vos arguments, je n'ai même pas écoute les
20 arguments de Maitre Carr Harris.

M. RANCOURT: Encore - encore plus inquiétant,
Monsieur le Juge, parce que....

LE TRIBUNAL: Allons-y, parce que - convaincre-moi
comment est-ce que j'ai juridiction de casser (ph)
25 une décision d'un autre juge rendue dans ces cours?

M. RANCOURT: Ce - ce n'est pas nécessairement la
question précise. Mais, voici. Nous sommes devant
- par rapport à la motion des refus, nous sommes
devant une situation exceptionnelle qui, à mon
30 sens, n'a pas été traiter dans la jurisprudence.

C'est le cas où un juge se récuse pendant le

processus de la motion, avant qu'il est écrit quoi que ce soit. Et en se récusant, il a dit devant la Cour, et vous avez commandé le procès-verbal, mais il a dit devant la Cour qu'il était incapable d'être impartial à mon égard. Qu'il devait se retirer de toutes décisions par rapport à moi.

Alors, je vois mal comment il pourrait mettre quoi que ce soit en écrit maintenant. Et je vois mal comment on peut ne pas examiner ce qui c'est passer, parce que la motion n'était pas close. Il n'y avait rien d'écrit.

Et un juge peut toujours changer les décisions annoncé pendant le processus quand vient le moment d'écire. Et aussi, ses décisions là je suis de l'avis....

LE TRIBUNAL: Non, mais je n'ai pas - je n'ai pas d'intention, dès que vous recevez ses décisions, je ne sais pas si - j'imagine que c'est des décisions sur la motion. Je ne sais pas si c'est votre motion ou c'est la motion de - de M. Carr Harris ou M. Doody.

MR. DEARDON: Yes, Your Honour, it was, again, his - the defendant's refusals motion for the - for the University of Ottawa's witnesses' refusals. And as you know, you have a refusals chart and one word's written in it. And it was irrelevant or, you know, one word.

There's [sic] no reasons that are going to be issued. And there's not gonna be any change of

mind by Justice Beaudoin. He's ruled on the refusals and puts it in the box. And Mr. Rancourt knows the answers to all of them, because every one of them were rejected.

Every one of his refusals questions was rejected by Justice Beaudoin on the UofO witnesses. Nothing's been decided about Joanne St. James (ph), or St. Lewis' questions.

M. RANCOURT: Monsieur le Juge, c'est une interruption qui (inaudible) l'importante de la présentation. Je suis en milieu de ma présentation pour les raisons.

Euh, nous sommes dans une situation exceptionnelle ou le juge s'est récuser pour des raisons sérieuses. Et - et - c'est...

LE TRIBUNAL: Oui, mais si vous voulez...

M. RANCOURT: ...et - mes...

LE TRIBUNAL: Si vous voulez faire....

M. RANCOURT: Mais, laissez-moi....

LE TRIBUNAL: Si vous voulez faire appel,....

M. RANCOURT: Laissez-moi faire mon argument.

LE TRIBUNAL: Oui.

M. RANCOURT: Je n'ai pas fini ma phrase, Monsieur le Juge.

LE TRIBUNAL: Okay.

M. RANCOURT: Là je dois reprendre la pensée, je m'excuse. Euh, quand le juge s'est récuser, j'avais fait une demande pour avoir le temps de préparer une motion pour lui demander de se récuser. Je n'ai jamais eu la chance de faire des

arguments devant la Cour pour les raisons que je
croix qu'il y a crainte raisonnable de partialité.
Mais, il y a, à mon sens, des raisons très
sérieuses qui sont amplifier par ce qui c'est
passer le 24 juillet en cour.

Et donc, étant donné cette situation, les décisions
de Juge Beaudoin doivent être mis de côté, et je
dois avoir le temps de – d'expliquer les raison
pour lesquelles ses décisions doivent être mise de
côté.

J'ai demandé d'avoir ce temps le 24 juillet. Je la
demander encore dans la motion qui est devant nous
aujourd'hui. Et je l'ai demandé en lettre, de
façon très précise, au Juge en Chef Régionale
Hackland.

J'ai besoin....

LE TRIBUNAL: Mais c'est simple la chose. Parce
que si vous voulez – vous être pas heureux ou pas
d'accord avec la décision de Juge Beaudoin, je
comprends. Vous n'êtes pas d'accord avec la
décision.

Et je ne suis pas exactement au courant c'est quoi
ses décisions parce que moi je n'ai pas vraiment
vue grand choses, sauf par des affidavits de vous
et peut-être les autres procureurs. Donc – mais,
si vous n'êtes pas d'accord avec une décision d'un
juge, votre remède c'est de faire appel de ses – de
ca décision. C'est ça notre système.

M. RANCOURT: Mais, Monsieur le Juge....

LE TRIBUNAL: Une motion devant le Juge Hackland, une motion ou une lettre a Warren Winkler, le Juge en Chef Winkler, ça donne quoi? Parce qu'il faut - si tu n'es pas d'accord avec une décision de moi, d'un autre juge, bon on peut faire une erreur. Ça arrive. Si c'est le cas, des procureurs n'ont pas honte de faire appel. Eux-autres ils font ça. Vous avez les mêmes droits.

M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: Si t'es pas d'accord, fait appel.

M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: Vous être libre. Vous être libre à porter appel la décision. Mais je ne suis pas la cour d'appel. Je ne suis pas la cour divisionnaire. Donc,...

M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: ...ce sont les....

M. RANCOURT: Je suis très conscient de ce que vous dites. Mais - mais....

LE TRIBUNAL: Bon, bon bien on est d'accord avec...

M. RANCOURT: Mais, laissez-moi faire mon argument.

LE TRIBUNAL: Bien c'est ça - c'est....

M. RANCOURT: L'argument n'est pas si je dois....

LE TRIBUNAL: Ça donne rien de me - de me demander de casser la décision de Juge Beaudoin quoi que ce soit. Un; je n'ai pas exactement - je ne suis pas sure exactement c'était quoi sa décision. Donc, je n'ai pas ses - une décision devant moi.

Deux; je n'ai pas l'autorité. Donc, de passer beaucoup de temps pour me demander de casser une

décision du Juge Beaudoin....

M. RANCOURT: Là...

LE TRIBUNAL: Je ne peux pas.

M. RANCOURT: Là, Monsieur le Juge, c'est très sérieux ce qui est entrain de ce passer, parce que je n'ai jamais demandé ce que vous dites que j'ai demandé.

LE TRIBUNAL: Mais c'est ça que j'ai entendue ici dans votre....

M. RANCOURT: Non.

LE TRIBUNAL: Cinq, le paragraphe 5.

M. RANCOURT: Le paragraphe 5 - allons au paragraphe 5. Dans les demandes, vous parlez du paragraphe 5 dans les demandes, dans le « Orders requested », n'est-ce pas?

LE TRIBUNAL: « Set aside rulings for determinations », (c), 5(c).

M. RANCOURT: Non, Monsieur le Juge, il faut lire le paragraphe 5 du début.

LE TRIBUNAL: Oui.

M. RANCOURT: Le paragraph 5 est., « An order for further motions in this action to be heard - for no further motions in this action to be heard until Regional Senior Justice Hackland has responded to the defendant's letter to him of July 25th. In regards to...."»

Ce ne veut pas dire que je demande une décision. Parce que j'ai demandé des précisions au Juge Hackland. Et j'ai demandé qu'il intervienne pour me donner le temps de mettre la motion devant. Je demande le temps. La façon que vous avez exprimée

5 récemment m'inquiète très sérieusement parce que je suis conscient que je dois mettre une motion, mais tout ceci vient de se passer dans 48 heures. Je ne peux pas prendre (ph) une motion importante comme sans les procès verbale. Et comme ça, instantanément.

10 Je demande simplement le temps de mettre cette motion de l'avant pour que ses décisions soient mises de côté. C'est ce que je demande. Je ne demande pas que vous fassiez la décision de mettre les décisions de Juge Beaudoin de côté. Ce n'est pas ça que je demande.

15 Je demande le temps de mettre ma motion de l'avant pour montrer qu'une crainte raisonnable de partialité qui est tel que les décisions même du Juge Beaudoin doivent être mises de côté.

20 Je suis en train d'argumenter pour le temps de recevoir les procès-verbaux. Le temps des étudier. Et le temps de faire ma motion que je n'ai pas eue depuis le moment où j'ai dû mettre cette, euh, chose devant la Cour, cette crainte raisonnable de partialité.

25 LE TRIBUNAL: Donc, vous, vous demandez vraiment un ajournement de votre motion? Parce que....

M. RANCOURT: Je demande un ajournement de leurs motions.

30 LE TRIBUNAL: Non, non. Leurs motions c'est votre motion. Votre motion. Votre motion sur les refus. Les refus par Madame St. Lewis.

M. RANCOURT: Oui.

LE TRIBUNAL: Qui a refusé de répondre à certaines questions. Ca je suis prêt à le faire. Parce que ça, je peux ajourner votre motion.

M. RANCOURT: Oui.

LE TRIBUNAL: Attendre – je ne sais pas si le Juge Hackland ou le Juge Winkler ont l'autorité de faire ce que vous demandez. Mais, au moins vous aurez une réponse. Donc, je peux l'ajourner, *sine die*.

M. RANCOURT: Je suis absolument d'accord avec ça, Monsieur le Juge.

LE TRIBUNAL: Okay.

M. RANCOURT: Je vous remercie de prendre cette décision.

LE TRIBUNAL: Okay.

M. RANCOURT: C'est tous ce que je demande. C'est que ma propre motion soit ajournée pour que j'aie le temps de faire une motion pour faire mettre de côté les décisions de Juge Beaudoin. C'est précisément ce que je demande et c'est pour ça que j'ai mis....

LE TRIBUNAL: Mais, je – je ne vous accorde pas d'extension de temps, là. Ce n'est pas – je ne sais pas, il y a question du 20 de juin ou est-ce qu'il a fait des décisions à ce moment-là, ou – ca – ca, vous êtres – vous avez – je fais simplement ajournée votre motion...

M. RANCOURT: Oui.

LE TRIBUNAL: ...*sine die*.

M. RANCOURT: Ca veut dire quoi ça là?

LE TRIBUNAL: Bien, juste qu'à temps que c'est reporter sur avis.

M. RANCOURT: Oui. C'est - c'était, euh, mon -
c'était un but aujourd'hui de faire ça, parce que
je ne comprends pas, Monsieur le Juge,...

LE TRIBUNAL: Mais ça veut dire...

M. RANCOURT: ...comment on peut....

LE TRIBUNAL: Oui, mais attend.

M. RANCOURT: Je veux....

LE TRIBUNAL: Ah,...

M. RANCOURT: Je veux finir mon argument.

LE TRIBUNAL: ...excusez-moi, j'ai une chance à
finir ma phrase, premièrement. Ca va de même.

M. RANCOURT: Oui, excusez-moi, Monsieur le Juge.

LE TRIBUNAL: Il faut qu'on - il faut qu'on suit
les règles. Mais, ça je peux l'ajournée, votre
motion. Mais, je veux procéder, ou je vais vous
entendre sur les questions de refus. Moi je ne
suis pas impliquer avec l'affaire de Beaudoin. Je
ne suis pas impliquer avec ça.

Donc, pourquoi ne pas faire la motion sur les
refus? Puis si vous n'êtes pas d'accord avec mes
décisions là-dessus, vous avez le droit de faire
appel ou de dire « non, s'aurait dû être un juge
de...», je ne sais pas, Toronto, s'ils ont des
juges bilingues?

M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: Peut-être qu'il en a quelque part.

M. RANCOURT: Je m'excuse, mais je suis confuse là.
On parle de ma motion....

LE TRIBUNAL: Il y a deux - il y a deux motion.
Moi j'ai deux motions. J'ai votre motion qui
vraiment, je ne sais pas si ça donne - demande un

ajournement de tous? Si je peux comprendre, de base parce que la - les décisions de Juge Beaudoin. C'est ça que vous demandez, parce que vous voulez casser la décision de Juge Beaudoin, le ou les décisions.

M. RANCOURT: Entre autres,...

LE TRIBUNAL: Bon.

M. RANCOURT: ...il y a ça.

LE TRIBUNAL: Donc, je vais vous accorder ça. Et - mais, deuxièmement, M. Deardon, il reporte votre motion qui - donc - donc, je vais vous entendre sur la motion des refus. Au moins vos plaidoyers...

M. RANCOURT: Non, mais, Monsieur le Juge, je m'excuse, mais je ne comprends pas. La motion...

LE TRIBUNAL: Oui.

M. RANCOURT: ...que je veux ajournée....

LE TRIBUNAL: Ça c'est votre motion?

M. RANCOURT: Non, non. Non, non.

LE TRIBUNAL: Parce que c'est - c'est - il y a deux motions.

M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: Cette motion....

M. RANCOURT: ...permettez-moi d'expliquer...

LE TRIBUNAL: Oui.

M. RANCOURT: ...comment je comprends la situation. Ma motion sur les refus, qui n'est pas la motion devant nous aujourd'hui, premièrement.

LE TRIBUNAL: Ca je - ca j'aimerais entendre, cette motion.

M. RANCOURT: Non, Monsieur le Juge.

LE TRIBUNAL: Pourquoi pas?

M. RANCOURT: Je demande d'ajournée cette motion

des refus. C'est ce que je demande.

LE TRIBUNAL: Okay. Bon, bien là on va faire affaire avec ça. Mais, votre motion, je l'ajourne - je ne suis pas pour rédiger certaines paragraphes, malheureusement.

THE COURT: It's a motion.

M. RANCOURT: Non, non.

THE COURT: I'm not gonna strike out parts of the motion, Mr. Carr Harris.

M. RANCOURT: Monsieur le Juge....

THE COURT: I'm gonna just adjourn this *sine die*.

MR. DEARDON: Except what he's - what he's getting at....

M. RANCOURT: Il y a - il y a une confusion, Monsieur le Juge.

MR. DEARDON: Can I have a moment?

M. RANCOURT: Yeah.

MR. DEARDON: The part in paragraph 5 of the motion is for Your Honour. The preamble, "An order that no further motions in the action be heard until..." What he....

THE COURT: I'm not granting the motion.

MR. DEARDON: Right.

THE COURT: I'm not granting the motion.

MR. DEARDON: Right. So....

THE COURT: And I want to hear argument about whether he's seeking an adjournment, now of, essentially, your returning his motion or it was put over from Beaudoin from Tuesday or how it....

MR. DEARDON: What he's - what he's not understanding is he thinks when you're adjourning *sine die* this motion,...

THE COURT: No, it's not....

MR. DEARDON: ...that you're gonna not hear his refusals motion...

THE COURT: No, no, no, different motions.

MR. DEARDON: ...on Joanne - that's what - that's what he's confused about.

M. RANCOURT: Oui, oui, oui, c'est ce que j'avais compris de ce que vous avez dit, Monsieur le Juge.

LE TRIBUNAL: Non, non, non, ce n'est pas ça. Ça c'est, vous avez une motion, je l'ajourne.

M. RANCOURT: Non, non. Je ne veux pas ajournée ma motion.

LE TRIBUNAL: Bien c'est ça. Parce que,...

M. RANCOURT: Non, c'est - bien c'est parce qu'on....

LE TRIBUNAL: ...finalement, on va entendre....

M. RANCOURT: ...parle de ma motion, puis il a deux motions, puis on a été mélangé. Moi j'ai été mélangé.

LE TRIBUNAL: Non, c'est votre motion de hier.

M. RANCOURT: oui.

LE TRIBUNAL: Ça, on n'a pas de décision du Juge Hackland.

M. RANCOURT: Mais, ma motion....

LE TRIBUNAL: Puis je peux rien faire avec, de toutes façon. Euh,....

THE COURT: So I don't see what I can do with this motion anyway.

M. RANCOURT: Monsieur le Juge, si je peux vous donner une précision?

MR. CARR HARRIS: Excuse me, Mr. Rancourt. Just - just to be - there is no - we agreed, there is no

jurisdiction to appeal what Justice Beaudoin decided in those rulings. If there's a bias and he's right, it's his say, he can deal with it on any appeal.

But there is no reason to leave these - these things in there, because we will have to come back. This motion has no great moment to us now that our - our refusals are done. But we'll have to come back and deal with this again in the future.

So my - my respectful submission, and I - I am completely concerned whether there's a willingness to comprehend what's going on here - but, um - but - from my friend, because he's an intelligent man.

M. RANCOURT: Je m'objecte de cette caractérisation.

LE TRIBUNAL: Non, non, non.

MR. CARR HARRIS: Now....

M. RANCOURT: Ce n'était pas raisonnable, Monsieur le Juge.

MR. CARR HARRIS: Okay.

M. RANCOURT: Il y a - il y a....

LE TRIBUNAL: Mais, il vous décrit comme intelligent,...

M. RANCOURT: Non, non.

LE TRIBUNAL: ...Maitre Carr Harris.

M. RANCOURT: Excusez-moi, Monsieur le Juge, mais j'ai bien compris ce que mon...

LE TRIBUNAL: C'est un compliment.

M. RANCOURT: ...ce que mon ami a dit.

LE TRIBUNAL: C'est de prendre un compliment.

M. RANCOURT: C'était une insulte personnelle.

LE TRIBUNAL: Non, non, non. Je ne l'ai pas pris de même. Je ne l'ai pas pris de même.

M. RANCOURT: Moi je l'ai entendue.

MR. CARR HARRIS: If I may finish? Uh, so I - I'm urging you to remove that, because there's simply no jurisdiction.

THE COURT: I'm not sure I have jurisdiction.

MR. CARR HARRIS: And it only encourages, in the long run....

THE COURT: I'm not sure I have, Mr. Carr Harris, jurisdiction to remove something from a motion. Uh, I'm - I'm - if I hear it, I can reject it or I can grant it. But I'm not sure I can strike if you bring a motion. However, brilliant or not so brilliant, can I simply say, "I strike your motion"?

I think I can dismiss it if I hear it, or I can grant it if I agreed with it, but I'm not sure I have - even though I'm not disagreeing with you as I've already indicated, I don't think I have jurisdiction to overturn another judge's decision. That's an appeal matter. I understood....

LE TRIBUNAL: Moi j'ai compris que tu voulais avoir du temps pour faire votre appel.

M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: Vous avez le temps de le faire,...

M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: ...parce que moi je ne suis pas la cour d'appel, ni la cour divisionnaire.

M. RANCOURT: Mais, Monsieur le Juge, deux points

importants : Premièrement, je ne l'accepte pas qu'on ajourne la motion qui est devant nous, ma motion de hier, comme vous dites. Je n'accepte pas ça. Je ne veux pas l'ajournée, ça c'était une confusion. Je pensais que...

LE TRIBUNAL: Okay.

M. RANCOURT: ...vous étiez en train de parler de la motion des refus.

LE TRIBUNAL: Okay.

M. RANCOURT: Okay?

LE TRIBUNAL: Donc, on devrait parler de la motion des refus.

M. RANCOURT: Pardon?

LE TRIBUNAL: On devrait parler de votre motion des refus.

M. RANCOURT: Non, mais, ont - ont doit, d'abord, faire cette motion qui est devant nous. Et le point important est le suivant : Et ça c'est très important, Monsieur le Juge. Les refus de M. Beaudoin, impact les questions d'après, dans la motion des refus. Et de façon très significative. Et c'est pour ça qu'on ne peut pas continuer.

LE TRIBUNAL: Okay, mais si vous avez....

M. RANCOURT: C'est pour ça qu'on ne peut pas continuer.

LE TRIBUNAL: Si vous avez, euh, des problèmes avec la décision du Juge Beaudoin, j'ai compris vous n'êtes pas d'accord avec ses décisions, ou est-ce que, selon vous, il est biaiser [sic], une manque d'impartialité envers vous; ça c'est votre allégation.

Donc, ca - mais ce n'est pas à moi à décider si vous avez raison ou non sur cette question-là. Ça c'est une question de cour d'appel, cour divisionnaire. Je crois c'est ça. M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: Donc, je ne suis pas la cour divisionnaire, ni une cour d'appel. C'est ce que j'essaye de vous dire. Ce n'est pas dans la bonne - votre demande ici d'arrêter les procédures en attendant que vous fessiez appel, il faut faire cette demande à la cour divisionnaire. Il faut demander un « stay », demander une....

M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: Mais ce n'est pas devant moi ça.

M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: Techniquement, c'est ça que vous demandez.

M. RANCOURT: Monsieur le Juge, ça fait trois fois que vous dites...

LE TRIBUNAL: Oui.

M. RANCOURT: ...ce que je vous demande c'est de mettre de côté les décisions du Juge Beaudoin.

Non, je ne vous demande pas ça. Je n'ai jamais demandé ça. Et je ne veux pas que...

LE TRIBUNAL: Mais vous demandez....

M. RANCOURT: ...la Cour comprenne que je demande ça.

LE TRIBUNAL: Okay.

M. RANCOURT: Je demande....

LE TRIBUNAL: Un ajournement de tous les procédures en attendant que quelque chose arrive avec le Juge Hackland peut-être, ou d'autres, quelqu'un va

casser ses décisions, je ne sais pas c'est qui.

M. RANCOURT: Monsieur le Juge, mettez-pas des mots dans ma bouche. Laissez-moi....

LE TRIBUNAL: Mais c'est votre - c'est votre motion. C'est votre motion.

M. RANCOURT: Oui, mais la chose essentielle dans cette motion, écoutez, cette motion j'ai dû la créer de toutes pièces dans l'espace de quelques heures. C'est - c'était fait en urgence.

LE TRIBUNAL: Oui.

M. RANCOURT: Okay? Donc, c'est clair qu'il ne va pas nécessairement avoir une perfection au niveau des arguments, etcetera. Mais, les - le point essentiel de mon intervention c'est que étant donné la récusation exceptionnelle du Juge Beaudoin, ses décisions, je dois les mettre en questions, je dois avoir le temps de faire cette motion-là.

Ses décisions doivent être - la - la question de si ses décisions doivent être mise de côté ou pas, doit être régler avant de poursuivre ma motion sur les refus, parce que ça impacte, de façon globale, la motion sur les refus. Il y a un impact significatif, on - ce n'est pas vraie que c'est des choses (inaudible)....

LE TRIBUNAL: Non, mais ici, c'est la question des refus par Madame St. Lewis. C'est tous ce que moi, vraiment, j'ai - ça c'est la motion que vous avez - qui était cédule devant le Juge Beaudoin, euh, mardi, n'est-ce pas? C'était une motion de vous puis Maitre Deardon...

M. RANCOURT: Non, Monsieur le Juge.

LE TRIBUNAL: ...pour déterminer est-ce qu'il y avait raison pour refuser certaines questions que vous avez posées.

M. RANCOURT: Monsieur le Juge, il y avait....

LE TRIBUNAL: Est-ce que j'ai - est-ce que j'ai mal compris?

M. RANCOURT: Oui, Monsieur le Juge. Il y a, dans cette motion sur les refus,..,

LE TRIBUNAL: Oui.

M. RANCOURT: ...quatre, euh, témoins qui ont refusé de répondre à mes questions.

LE TRIBUNAL: Oui.

M. RANCOURT: Okay. Et la question primordiale qui était devant le Juge Beaudoin était la question de pertinence des refus. Cette question de pertinence, Juge Beaudoin l'a tranché pour tout le monde, incluant les refus qui n'avaient pas encore été, euh, euh, décider.

Donc, la décision de Juge Beaudoin par rapport à pertinence a un impact central sur toute la motion. Et cette décision-là, entre autres, doit être revue. Je dois avoir le temps de faire une motion pour expliquer pourquoi cette décision doit être mise de côté. Parce qu'elle impacte toute la motion de mes refus de façon primordiale. C'est - c'est la grande décision.

LE TRIBUNAL: Donc, on devrait - on devrait parler de votre motion de refus. Parce que c'est ça vraiment qu'on est ici aujourd'hui, pour trancher ou ajourner.

Donc, vraiment, vous demandez un ajournement de votre motion de refus selon Madame St. Lewis?

M. RANCOURT: Monsieur le Juge, on ne doit pas...

LE TRIBUNAL: C'est ça qu'on est....

M. RANCOURT: ...parler de la motion de refus avant d'avoir...

LE TRIBUNAL: Parce que....

M. RANCOURT: ...décider l'ajournement.

LE TRIBUNAL: Bon, ça....

M. RANCOURT: On peut parler...

LE TRIBUNAL: Okay.

M. RANCOURT: ...de certains éléments...

LE TRIBUNAL: Oui, mais votre...

M. RANCOURT: ...de....

LE TRIBUNAL: ...motion, là, je vais l'ajourner, parce que, selon moi, ce n'est vraiment pas dans mes juridictions de - de faire quoi vous demandiez. Mais je vais vous entendre, les mêmes arguments dans votre motion de refus. Donc, fessiez vos arguments dans la motion de refus. Vous demandez un ajournement.

M. RANCOURT: Mais, Monsieur le Juge....

LE TRIBUNAL: Ca j'ai ajournée. J'ai ajournée votre motion de - d'attendre toutes les affaires en attendant le Juge Hackland pour casser, etcetera, etcetera.

Mais vous avez les droits - vous avez le droit de porter appel. Je vous l'ai dit plusieurs fois. C'est ça votre intention, votre - si vous voulez faire appel de la décision de Beaudoin, quoi que ça

soi, donc, vous avez les pleines droit de le faire.

M. RANCOURT: Bien sûr, Monsieur le Juge.

LE TRIBUNAL: Bien c'est ça, vous avez ces droits.

Donc, vous pouvez le faire, si - je ne vous
conseille pas de le faire, ce n'est pas un conseil
que je vous donne, c'est tout simplement vous
avisez que vous avez le droit de le faire. Donc,
c'est à vous a décider si vous avez une chance de
(inaudible) cause ou....

M. RANCOURT: Mais, Monsieur le Juge....

LE TRIBUNAL: Donc, mais ça, si vous voulez le
faire, vous pouvez le faire.

M. RANCOURT: Si j'avais eu le temps et si j'avais
les procès-verbaux, je l'aurais déjà fait. Okay.
Il n'y a aucune question là-dessus. Il n'y a
aucune question là-dessus. Mais, je - je suis en
objection que vous (inaudible) ma motion, parce que
l'essentiel partie de ma motion c'est justement
d'ajournée la motion des refus.

LE TRIBUNAL: Okay. Bon bien, c'est ça. Je
devrais vous entendre, finalement, ça je vais vous
entendre.

M. RANCOURT: D'accord.

LE TRIBUNAL: Bon. Parce que ça....

THE COURT: We're now gonna hear - I've adjourned
the other motion. Mr. Rancourt's motion. We're
gonna hear the motion on the refusals by Ms. St.
Lewis.

M. RANCOURT: Non.

THE COURT: He's seeking - he's seeking an
adjournment...

M. RANCOURT: Oui.

THE COURT: ...of that motion.

MR. CARR HARRIS: If that is so, Your Honour, I'm - I will be (inaudible) ask to get the document...

THE COURT: I will - you know, I'm not disagreeing with you, legally, but,...

MR. CARR HARRIS: I understand.

THE COURT: ...but I don't.

MR. CARR HARRIS: And that - I mean, I will understand.

THE COURT: Okay.

MR. CARR HARRIS: So, um, what I - the only thing left to do, if I may interrupt, is Mr. Doody, I've got his schedule going forward. So if it's adjourned to a date, ...

THE COURT: I've adjourned it, *sine die*, because I'm not sure that it's really the remedy he's seek (ph) - I'm trying to say that if he wants to appeal, he has a - he may have a right, has a right. I don't know if there are time limits or where - is it the 20th, I don't know if it's the 20th or if it's Tuesday.

MR. CARR HARRIS: Yeah, I - I....

THE COURT: There are time limits for appealing.

MR. CARR HARRIS: I - and I think he may be past - past the time from the day of pronouncement, it was last June, for a - for a....

M. RANCOURT: C'est une - c'est une question légale. Il y a - il y a des recours par ces questions légales.

LE TRIBUNAL: Ca je ne sais pas.

M. RANCOURT: Oui.

LE TRIBUNAL: Vous pouvez demander une extension de

temps. Peut-être ça va être accordé. Mais, ça -
ça vous avez les pleins droits de le faire.

M. RANCOURT: oui.

LE TRIBUNAL: Puis ça a l'aire que c'est ça vous
allez dans cette direction.

M. RANCOURT: Bien sûr.

LE TRIBUNAL: Bon. Ça vous avez pleinement de
liberté de le faire.

M. RANCOURT: Et puis avec des raisons....

THE COURT: So, you're asking - you're asking to be
excused?

MR. CARR HARRIS: I'm asking to be excused, Your
Honour.

THE COURT: Okay.

MR. CARR HARRIS: Thank you.

THE COURT: You may be excused.

LE TRIBUNAL: Okay. Là, sur votre motion de refus,
qui est vraiment la balance de la motion qui était
devant Beaudoin au mois de juin?

M. RANCOURT: Oui, mais c'est - c'est plus que -
c'est plus que la balance. Parce qu'en plus des
tableaux de refus, il y avait aussi une demande de
radier certains passages dans un témoignage, et....

LE TRIBUNAL: Donc, j'ai - je n'ai pas d'intention
de faire aucune que ça soit avec les décisions du
Juge Beaudoin. Je l'ai dit plusieurs fois.

M. RANCOURT: Oui, mais...

LE TRIBUNAL: Je n'ai pas l'autorité.

M. RANCOURT: ...je ne demande pas ça.

LE TRIBUNAL: Okay. Moi, ces questions - quoi
qu'il reste à faire dans cette motion? Il reste
les refus par Madame St. Lewis.

M. RANCOURT: Monsieur le Juge, avec tout respect....

LE TRIBUNAL: C'est tous ce que j'ai autorité de faire.

M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: Ajournée. C'est ça vous demandez?

M. RANCOURT: Avec tout respect,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...nous n'allons pas - nous allons parler de mes argument a pourquoi cette motion de refus doit être ajournée. Nous n'allons pas commencer à parler de qu'est-ce qui reste à faire tous de suite.

LE TRIBUNAL: C'est - c'est....

M. RANCOURT: Mais quand nous allons parler de qu'est-ce qui reste à faire,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...il y a des décisions qui était devant le Juge Beaudoin qui n'ont pas été prisent, qui était en plus du tableau de refus de Madame St. Lewis.

Alors, ce n'est pas que le tableau de refus de Madame St. Lewis, il y avait d'autres décisions aussi qui étaient devant la Cour qui n'ont pas été prisent encore. C'est juste pour clarifier que je vous dis ça, Monsieur le Juge. C'est juste pour clarifier.

Mais la - le premier point est la question d'ajournée la motion pour les refus. Et je veux adresser ca de la façon que ça mérite d'être

adressé.

Si je peux avoir quelques instants pour recueillir mes pensées, Monsieur le Juge? Euh, en fait, est-ce que ça serait possible que je puisse prendre quelques minutes pour aller aux toilettes, en même temps, euh,....

LE TRIBUNAL: On va prendre cinq minutes? Prendre cinq minutes?

M. RANCOURT: Merci.

S U S P E N S I O N

A U R E T O U R :

LE TRIBUNAL: M. Rancourt, donc, j'ai l'intention, pour la question d'ajournement, de limite le temps de cinq minutes. Cinq minutes pour vous, cinq minutes pour M. Deardon sur la question d'ajournement.

M. RANCOURT: C'est....

THE COURT: Madam Registrar, please keep track of the time.

COURT REGISTRAR: Yes, Your Honour.

THE COURT: Okay, thank you.

LE TRIBUNAL: Vas-y.

M. RANCOURT: Monsieur le Juge, je m'objecte très...

LE TRIBUNAL: Je comprends vos objections.

M. RANCOURT: ...fortement.

LE TRIBUNAL: Oui, j'ai - j'ai compris.

M. RANCOURT: C'est la question importante aujourd'hui pour moi.

LE TRIBUNAL: Okay. Okay. Vous avez....

M. RANCOURT: Cinq minutes ne semble pas raisonnable.

LE TRIBUNAL: C'est raisonnable. J'ai déjà décidé, allons-y.

M. RANCOURT: Alors, je procède sous objections.

LE TRIBUNAL: Oui.

M. RANCOURT: Bon, alors, je vais m'en tenir à deux points. Premièrement, à mon sens, il y a des évidences très forte au sujet d'une crainte raisonnable de partialité, et d'une apparence de conflit d'intérêts en ce qui a attiré au Juge Beaudoin dans la motions des refus, dans ma motion des refus et dans la cause jusqu'à maintenant.

Donc, à mon sens, et en incluant ce qui c'est passer le 24 juillet, les ordres et les décisions de Juge Beaudoin doivent êtres misent de côté. Je ne vous demande pas de faire ça. Je vais mettre une motion pour, et très rapidement et le plutôt possible, je vais mettre devant la Cour une motion pour arriver à ces fins dans ces circonstances exceptionnels ou un juge s'est récuser de lui-même en mi- motion, en mi- motion. Ça c'est le premier point.

Et le deuxième point est si on regarde les décisions qui ont été prisent par le Juge Beaudoin l'hors du 20 juin, dans la première session dans ma motion pour les refus qu'ils sont des refus dans ma motion pour maintenance et champartie.

Si on regarde les décisions du Juge Beaudoin, je dirais que la décision la plus importante est centrer autour de la question de qu'est-ce qui est pertinent. Parce que la question de pertinence informe directement si une question est valable ou pas et si le refus doit être accordé ou pas. Donc, la question que le Juge Beaudoin à trancher, qui est la plus importante, c'est toute la question de la pertinence.

Et sur cette question de pertinence, il a jugé une grande gamme de choses comme étant pas pertinente, et à mon sens, ses jugements étaient teinter fortement par cette crainte de raisonnabilité [sic] – de raisonnable de partialité et cette apparence de conflit d'intérêt.

Deuxièmes, le Juge Beaudoin a fait une décision, une autre décision très importante, qui, elle aussi, impacte les questions dans les tableaux de refus avec lesquelles on n'avait pas fini. Le tableau de refus principal qu'on n'avait pas encore adressé est celui de Madame St. Lewis.

Donc, il y a deux grandes décisions du Juge Beaudoin qui impacte fortement ces refus de Madame St. Lewis. La première, c'est toute la question de pertinence. Et la deuxième est très importante; le Juge Beaudoin à trouver qu'un affidavit d'un expert que j'ai mis devant la Cour n'était pas admissible pour des raisons techniques.

5 C'est-à-dire que mon expert dans cette motion, qui
avait fourni un affidavit, euh, n'avait pas rempli
le formulaire 53 que j'ai emmené avec moi à la cour
ce jour-là, le 20 juin. J'avais le formulaire 53.
Et aussi, l'expert n'avait pas attaché un
curriculum vitae à son affidavit. Et à ma
connaissance, cette exigence-là n'est absolument
pas dans les règles. Mais le Juge Beaudoin m'a
10 informer, je n'étais pas au courant que c'est dans
la jurisprudence. Ce sont des raisons techniques,
parce que l'expert avait expliqué son expertise
dans son affidavit.

15 Donc, ayant refusé l'affidavit de mon expert,
Monsieur le Juge, l'expert disait qu'une
communication qui impliquait le Professeur St.
Lewis par le billet de son avocat, qu'une
communication avec Allan Rock était authentique,
était une communication authentique.

20 Si cette communication est authentique, et si elle
dit ce que en toutes apparences, noir sur blanc,
elle semble dire; ça veut dire que il y a des refus
de Madame St. Lewis qui sont impacter directement.

25 Donc, il est essentiel que cet affidavit d'expert
soi admis. Et si il est admis, il impacte les
refus de Madame St. Lewis.

30 LE TRIBUNAL: Okay, vous avez une autre minute.

M. RANCOURT: Donc, vous voyez qu'il y a des
décisions de Juge Beaudoin qui, à mon sens, doivent
êtres misent de côté, je vais faire une motion là-

dessus. Je veux le temps de faire cette motion-là. Et ses décisions de Juge Beaudoin impacte les choses qu'on voudrait faire en continuant de façon, euh, précoce, cette motion pour les refus.

Je veux dire aussi que la caractérisation de M. Deardon, par rapport à cette communication que m'on expert dit est authentique, qu'il a mis devant le Juge Beaudoin, à mon sens, cette caractérisation est fausse, et l'expert adresse ce point-là dans son affidavit.

Donc, il y a un conflit entre un expert et l'opinion émise à la Cour par Mr. Deardon. Qui n'est pas en évidence. Cet expert-là doit être admis. On doit déterminer cette question-là de façon correcte, sans que ça soi teinter par une crainte raisonnable de partialité. Pour ensuite adresser correctement les refus qui doivent être adressé.

LE TRIBUNAL: Okay, merci.

THE COURT: It's not necessary to hear from you, Mr. Deardon, on the adjournment.

LE TRIBUNAL: Je n'accorde pas d'ajournement, parce que, euh, les points soulevés par M. Rancourt sont relater, toutes relater, à la décision du Juge Beaudoin, qui - j'ai expliqué à plusieurs reprises, je n'ai pas d'autorité de faire quoi que ce soit avec.

Et puis, de toute façon, on va compléter cette motion de refus. Et puis, ça va toutes être fait

ensemble et puis vous auriez vos droits de faire appel de l'ensemble. Si vous avez raison, bon, le tout va être ajourné en attendant cette - ce résultat.

5

Mais, de toute façon, on va avoir faites, euh, la dernière partie. Donc, allez-y avec....

MR. DEARDON: Your Honour,....

THE COURT: Who's....

10

M. RANCOURT: Monsieur le Juge, si, si...

MR. DEARDON: Sorry,...

M. RANCOURT: ...si je peux juste demander...

MR. DEARDON: ...Mr. Rancourt, I'd like to speak.

15

M. RANCOURT: ...une précision de ce que vous venez de dire.

THE COURT: Just, just one...

LE TRIBUNAL: Un instant, un instant.

M. RANCOURT: Je n'ai pas compris.

LE TRIBUNAL: Okay, un instant.

20

MR. DEARDON: Your Honour, um, you can sit down, Mr. Rancourt.

THE COURT: Thank you, just have a seat.

25

MR. DEARDON: Um, I - I need to add to the record that you've already granted Mr. Rancourt an adjournment. You did that yesterday. You accommodated it....

THE COURT: I adjourned it to today.

30

MR. DEARDON: To today and to accommodate his medical appointments. You've already granted one adjournment. I want to make it clear on the record that you're deciding, de novo, and - on whether the - the refusals in issue in this motion should've

been answered or should not be answered. And I'm not gonna be referring to anything Justice Beaudoin ruled. Nothing.

THE COURT: Exactly. It's not relevant. But whatever Beaudoin decided, to my decision, is not relevant.

MR. DEARDON: Yeah, no, I'm - this is de novo. Nobody - nobody has ruled on the questions that are in issue in this motion before you today. So I just wanted to put that on the record, thanks.

M. RANCOURT: Monsieur le Juge, si je peux juste demander une précision? Quand vous dites que les décisions de Juge Beaudoin ne seront pas pertinentes, pourrez-vous m'expliquer ce que vous voulez dire?

LE TRIBUNAL: Non, je ne donne pas d'explication. Merci. C'est votre....

M. RANCOURT: Je....

LE TRIBUNAL: Votre plainte c'est contre les décisions du Juge Beaudoin. Comme je vous ai indiqué à plusieurs reprises que j'ai bien indiqué, je n'ai rien à faire avec la décision de Juge Beaudoin.

J'ai aucune autorité de casser ses décisions. Ça c'est des droits d'appel. Et vous être au courant que vous avez le droit de le faire. Mais, de toute façon, on va compléter cet aspect. Merci. Allons-y.

M. RANCOURT: Oui, Monsieur le Juge,...

LE TRIBUNAL: Votre parti sur la question de - de refus.

5 M. RANCOURT: Oui. Alors, Monsieur le Juge, je -
je comprends votre décision. Et nous allons
procéder comme vous le suggérer. Euh, euh, et j'ai
été très pris par toutes ces motions urgentes ces
jours ici. J'ai - j'ai - je crois qu'il y a eu une
pratique, à mon sens, abusive.

MR. DEARDON: Your Honour, I'm objecting to what
Mr. Rancourt's trying to do here by what he's
putting on the record.

10 M. RANCOURT: Et....

MR. DEARDON: He's been - he's been ordered to now
argue the first issue in his refusals charts (ph).

M. RANCOURT: Je n'ai pas fini ma phrase, Monsieur
le Juge.

15 THE COURT: Okay, but I'll let you finish. I'll
let you finish what you're saying.

M. RANCOURT: Merci. Merci.

LE TRIBUNAL: Mais, de toutes façons, c'est - on va
sur la question des refus.

20 M. RANCOURT: Oui.

LE TRIBUNAL: Donc, vous devrez faire adresser la
première question, le premier refus.

M. RANCOURT: J'ai compris, Monsieur le Juge.

LE TRIBUNAL: Okay.

25 M. RANCOURT: Mais je veux finir ma phrase. Étant
donner ce que j'ai - les difficultés et tous ce qui
c'est passer à la dernière minute, les motions qui
sont pour le lendemain, euh, des - des rendez-vous
médicales qui sont complètement bafouer, etcetera.

30 Étant donné tout ça, j'aimerais avoir une pause
pour préparer un petit peut...

LE TRIBUNAL: Non, non, non.

M. RANCOURT: ...euh, 15 minutes.

LE TRIBUNAL: Non, vous avez eu le temps. Non.

M. RANCOURT: Quinze minutes?

LE TRIBUNAL: Non, on va d'avant. On va d'avant tout de suite. Je vais vous entendre, et puis on va compléter ça. Je m'entends qu'il y a des délais. J'ai déjà accordé un délai d'ajournement d'un jour. Vous avez - c'est votre motion du - mardi, on procède.

M. RANCOURT: Okay, Monsieur le Juge, je pense que - okay, euh, je vais sortir le tableau de refus, euh,

MR. DEARDON: Your Honour, I've prepared a compendium of argument that has the refusals chart in it that contains Mr. Rancourt's questions and the issues and then it has our answers. And I'll hand that you now. It's at Tab 7 of the compendium.

M. RANCOURT: Alors, Monsieur le Juge, euh,

LE TRIBUNAL: Est-ce que vous préférez faire vos représentations par écrit? Est-ce que c'est ça.

M. RANCOURT: Oh, euh, oui, j'apprécierais beaucoup faire mes représentations par écrit, si - si ça veut dire que je peux le faire ces jours-ci. Et - et, euh,

LE TRIBUNAL: Non, d'ici peut-être cinq jours?

M. RANCOURT: Oui, j'apprécierais,

LE TRIBUNAL: Cinq jours, cinq jours?

M. RANCOURT: J'apprécierais beaucoup ce - cette occasion, Monsieur le Juge. Parce que je suis bouleversé par la quantité de documents. Tous ce qui c'est passer ses jours-ci. Et j'ai du mal a -

a même trouver, m'orienter là aujourd'hui.

THE COURT: Okay, so written...

M. RANCOURT: Je - j'apprécie ça beaucoup.

THE COURT: ...submissions?

MR. DEARDON: Your Honour, I would request that we do exactly what we're supposed to do today. And that is to argue these refusals orally. Uh, in writing, this is further delay, and in essence, it gives him the adjournment he's looking for. We want to get on with this. And I - I was going to - when he - when....

THE COURT: How long do you think it will take you to argue?

M. RANCOURT: Monsieur le Juge,....

LE TRIBUNAL: Combien de temps ça vas vous prendre?

M. RANCOURT: Monsieur le Juge, je - je crois que vous avez faits une - une - une proposition très raisonnable qui ressoude beaucoup de possibilités d'injustice. Et ce que - le document que M. Deardon vient de vous passer, je ne l'ai pas eu d'avance. Je viens de le recevoir.

MR. DEARDON: It's all in the record, Your Honour. There's nothing new there. It's a compendium.

M. RANCOURT: Et - et je ne sais pas comment - dans qu'elle ordre il veut faire les choses, etcetera. C'est - c'est ma motion. J'apprécierais beaucoup - je suis - je suis dans un état vraiment déborder.

Vous - vous ne m'avez pas accordé 15 minutes pour m'orienter dans cette grande quantité de documents. Vous voyez que j'ai deux caisses plaines de documents et j'apprécie beaucoup votre suggestion.

Je pense qu'elle est juste.

LE TRIBUNAL: Est-ce que vous voulez faire des soumissions orales, brefs, des soumissions. Juste vos points en générale puis les détails par écrit?

THE COURT: I'll hear your oral arguments as well?

M. RANCOURT: Oui, je - je - je....

LE TRIBUNAL: Faites dont ça, mettons...

M. RANCOURT: Je pourrais faire ça, Monsieur le Juge.

LE TRIBUNAL: ...10 minutes, 10 minutes, en survol.

M. RANCOURT: Mais, mais....

LE TRIBUNAL: Je veux compléter cette affaire.

M. RANCOURT: Oui, je comprends, Monsieur le Juge.

LE TRIBUNAL: Okay, merci.

M. RANCOURT: Monsieur le Juge?

LE TRIBUNAL: Oui.

M. RANCOURT: Euh, je pense que....

LE TRIBUNAL: Vous aurez cinq jours à déposer vos documents, puis M. Deardon aurait cinq jours de - de réplique.

M. RANCOURT: Euh, est-ce que c'est cinq jours ouvrables?

LE TRIBUNAL: Non.

M. RANCOURT: Okay.

LE TRIBUNAL: Cinq jours. On est le vendredi.

Vous devrez être prêt, ça viendrait au - le 7 aout. C'est tu le 7?

THE COURT: The 2nd, the 2nd, yeah.

LE TRIBUNAL: Vous auriez au 7.

MR. DEARDON: Actually, August 1st is five calendar days, Your Honour. Sorry, it's Wednesday, August 1st.

M. RANCOURT: Euh, je n'ai pas un calendrier devant moi. Mais cinq jours calendrier à partir d'aujourd'hui?

LE TRIBUNAL: Oui.

M. RANCOURT: Oui. Pour faire des arguments écrits.

LE TRIBUNAL: Puis M. Deardon aurait cinq jours à faire réplique, au 6 d'aout. Mais donne-moi un survol de votre....

M. RANCOURT: Okay, Monsieur le Juge, j'aimerais - je vais faire se survol de mémoire. Mais j'aimerais ex (ph)

LE TRIBUNAL: On peut regarder les questions, parce que les questions sont ici.

M. RANCOURT: Uh huh. Euh, Monsieur le Juge,....

LE TRIBUNAL: Selon vous ils sont des questions de pertinence, c'est ça?

M. RANCOURT: Je - je vais - je vais....

LE TRIBUNAL: C'est pas mal toute une question de pertinence.

M. RANCOURT: Je vais faire le survol tel que je le comprends, Monsieur le Juge. Et ça va être très bref. Et, euh - mais je veux insister sur le fait que je ne veux pas être limité à quelques choses que je dis oralement dans mon écrit, évidemment.

LE TRIBUNAL: Non, non, non.

M. RANCOURT: Okay, d'accord. Dans ce cas, je suis très heureux de - de faire ce survol.

LE TRIBUNAL: Donne-moi les points, mettons...

M. RANCOURT: Okay.

LE TRIBUNAL: ...s'il y a des - si ils sont en groupe.

M. RANCOURT: Avant – avant de commencer, Monsieur le Juge, j’aimerais une précision. Est-ce que ce qu’on est en train de faire c’est une nouvel motion?

5 LE TRIBUNAL: Non, non. C’est votre motion.

M. RANCOURT: C’est une continuation...

LE TRIBUNAL: C’est encore – c’est le – oui....

M. RANCOURT: ...de la même motion?

10 LE TRIBUNAL: Bien, c’est la motion de – c’est votre motion selon Madame St. Lewis.

M. RANCOURT: Donc, on n’a pas fait un brie pour commencer une autre motion. On a – parce qu’il y a deux juges différents, vous voyez?

LE TRIBUNAL: Moi je fais la motion que je fais.

15 M. RANCOURT: C’est – est-ce que....

LE TRIBUNAL: Seulement la motion – je fais juste la partie que je fais. Je n’ai aucune relation avec la motion de Beaudoin.

M. RANCOURT: Mais c’est la même motion, c’est-ça?

20 LE TRIBUNAL: C’est votre motion, partie deux.

M. RANCOURT: D’accord. Okay. Je comprends.

LE TRIBUNAL: Il n’y a pas d’autre motion que je suis au courant.

25 M. RANCOURT: D’accord. Alors, euh, mon survol est comme suit: Pour répondre aux questions de refus de Madame St. Lewis, il faut, euh, si je peux me permettre de juste regarder le – les refus rapidement?

30 LE TRIBUNAL: Il y a un groupe de questions de vulnérabilité de Madame St. Lewis, est-ce qu’elle a eu des, euh – demander des promotions, etcetera, etcetera. Vous avez posé cette sorte de questions.

Selon eux autres, les défendeurs, que ce n'est pas pertinent ou c'est une question d'abus de procès. Ça c'est la première question vraiment, le premier point. Selon vous, ils sont pertinents de quelle façon?

M. RANCOURT: Okay. Donc, euh, dans mon survol je vais dire que la première chose que je vais expliquer, euh, devant - devant - dans mon écrit en plus de détails, c'est la raison pour laquelle chacune de ces questions-là sont pertinentes dans des cas de maintenance et de champartie.

Alors, ça - ça serait la première chose. Les premiers arguments va être de parler de la pertinence de ces questions-là, parce que ça informe directement si elles doivent être répondues ou pas.

Relatif à la pertinence, euh, la jurisprudence que je vais présenter, et que j'avais déjà présenté au Juge Beaudoin....

LE TRIBUNAL: Le - la jurisprudence, ça vous pouvez attacher ça a votre...

M. RANCOURT: Oui.

LE TRIBUNAL: ...documentation écrite.

M. RANCOURT: Mais c'est....

LE TRIBUNAL: Vos représentations.

M. RANCOURT: Donc, vous ne voulez pas que je fasse l'argument de....

LE TRIBUNAL: Sur quoi votre point, question - question de promotion. En regardant la première question, est-ce qu'elle a eu des promotions? Elle

a faite des applications pour les promotions? Ou - comment est-ce que c'est pertinent a la question de diffamation, euh, quelle - son allégation contre vous?

5 M. RANCOURT: Okay, Monsieur le Juge,....

LE TRIBUNAL: C'est ça la question. C'est une question d'une cause de diffamation, là. Il ne faut pas l'oublier. Ca de l'aire que l'on part....

M. RANCOURT: Non, Monsieur le Juge.

10 LE TRIBUNAL: Finalement, euh, Madame St. Lewis allègue qu'il y a eu diffamation, c'est ça?

M. RANCOURT: Monsieur le Juge,....

15 LE TRIBUNAL: Et puis vous êtes sur la champartie aussi, selon vous c'est une champartie, euh, de la part de l'Université d'avoir payé ses frais légaux pour supporter cette instance contre vous.

M. RANCOURT: La question de diffamation, Monsieur le Juge,...

LE TRIBUNAL: Ce sont les questions....

20 M. RANCOURT: ...est séparé de la question « Qu'est-ce qui est pertinente quand on veut établir maintenance et champartie? » C'est ça - c'est une question séparer.

25 Donc, mon - mon argument, par rapport à pertinence, ne toucherais pas la question de diffamation, touchera uniquement quand on veut démontrer maintenance et champartie, nous allons....

30 LE TRIBUNAL: Vous avez raison. Vous avez raison que c'est moi qui parlait de diffamation. C'est une question de champartie qui est vraiment pertinente dans votre....

M. RANCOURT: Oui.

LE TRIBUNAL: Donc, mais la question de est-ce qu'elle a faite application pour une promotion pour devenir professeur, est-ce que c'est pertinent a la champartie et de qu'elle façon?

M. RANCOURT: C'est pertinent de plusieurs façons. Juste pour donner un aperçu de ce que je vais mettre en écrit, en plus de détails. Euh, Madame St. Lewis, dans cette motion, a mis de l'avant un affidavit qui parlait de sa carrière et de l'évolution de sa carrière, et des nombreuses choses qu'elle a fait. Donc, c'est pertinent en vertu de l'affidavit elle-même qu'elle a mis de l'avant.

Euh, et deuxièmement, c'est pertinent parce que, euh, lors de - d'une question de maintenance, la jurisprudence à démontrer qu'une question centrale de maintenance c'est la - la dépendance ou l'indépendance, ou la vulnérabilité de la personne qui est maintenu. En autres mots : Est-ce que le corps qui maintien a une certaine influence ou contrôle sur la personne qui est maintenue.

Et, donc, ça touche directement a si il y a eu une promotion ou vas avoir une promotion, etcetera. Donc, il y a ce lien, parce que c'est rattacher à la question de vulnérabilité et possible - possibilité d'influence. Et ça c'est bien établi que la maintenance c'est un point important quand on parle de maintenance. Okay.

Euh, deuxièmement,....

LE TRIBUNAL: Une intention de prendre une poursuite....

M. RANCOURT: Alors, ça, Monsieur le Juge, c'est directement pertinent, parce que presque toute la jurisprudence montre qu'une question centrale c'est toujours « Est-ce que la personne qui représente la cause, qui porte la cause, l'aurait fait sans le financement? »

Et une des questions central par rapport à ça c'est « Est-ce qu'il y a de l'évidence que la personne a approcher un avocat avant d'obtenir l'aide, ou le financement, ou le soutiens, du corps qui maintient ? » Donc, c'est directement pertinent, et de toute évidence, je pense que c'est très clair.

LE TRIBUNAL: « Choix d'avocats » ça vous avez....

M. RANCOURT: Euh, est-ce que vous - on est à la question 3.

LE TRIBUNAL: Question 3 c'est pas mal la même question si je peux voir....

M. RANCOURT: Euh, on a peut-être fait une avant l'autre ou quelque chose.

LE TRIBUNAL: Non, non, ça de l'air la même sorte de question. Me semble que c'est la même question que....

M. RANCOURT: Mais, c'est le même - en Anglais il y a une différence. Il y a deux sortes de questions. Il y a « Issue » et puis « Question ». En Français je ne sais pas c'est quoi « Issue ». Mais je pense que....

LE TRIBUNAL: Je crois que c'est pas mal le même - allons-y a la question 4.

5 M. RANCOURT: Euh, pour la question 3, évidemment, ah, « Inclination to litigate », okay. La question 4, oui, donc, évidemment, quand il y a une maintenance, il peut y avoir maintenance sous différentes formes. Il peut y avoir un financement ou on peut faciliter avec certaines ressources autres que de l'argent. Il y a plein de choses qui peuvent être emmené en aide pour que ça soit de la maintenance.

10 Et donc - et aussi, il y a la question de l'influence qu'il a peut avoir. Si - si le corps qui maintient a choisi l'avocat, sa montre un manque d'indépendance, donc sa nous ramène a la question de l'indépendance et de la vulnérabilité.

15 Et donc, la question à savoir si le choix de l'avocat a été réellement indépendant, ou a été influencer par le corps qui maintient est une question central, parce que sa touche justement cette Indépendance. Ça touche l'intention qu'avait la personne, l'intention première, sans qu'elle ait de l'aide du corps qui maintient. Vous voyez?

20 Alors, est-ce qu'on passe à la question 5, Monsieur le Juge?

25 LE TRIBUNAL: Oui, numéro 5.

30 M. RANCOURT: La question 5 est très importance, parce que, euh, quand il y a maintenance, le corps qui maintient doit avoir une excuse, doit avoir une

raison propre pour maintenir la personne qui porte le cas.

5 Et cette excuse, ou cette raison qui a été proposer, une des raisons qui a été proposer, qui a été mis de l'avant sous témoignage assermenter par M. Allan Rock, c'était que le Professeur St. Lewis n'avait pas assez d'argent, ou n'était pas assez - euh, n'avait pas la possibilité financière de
10 porter cette - cette action.

Ça été mis de l'avant, et le Professeur St. Lewis ne l'a pas nié dans son témoignage sous serment. Elle n'a pas nié ça qu'elle avait peut-être dit ça.
15 Et donc, les questions relatives à sa réelle situation financière sont directement pertinentes à savoir si c'était une bonne raison, une raison valable, une excuse valable pour la maintenance. Et voilà l'origine de cette pertinence.
20

Ah oui, donc, la question 6, euh, quand il y a maintenance et champartie, une des questions centrale est nécessairement qu'elle est l'entente de maintenance? Qu'elle est, exactement, l'entente
25 qui a été conclus? Le - le décideur, le juge en cour doit décider - doit connaitre et doit investiguer qu'elle est cette entente que un partie dit est maintenance et champarteuse (ph). Qu'elle est l'entente, la nature même de l'entente?
30

Et donc, cette question 6 est pour tenter de découvrir la nature de l'entente. Est-ce qu'il y a

5 - comment - comment ses paiements sont faits? Qui
contrôle les paiements? Dans quels ordres ils sont
faits? Qui a, euh - comment l'argent est échanger?
Ce genre de questions qui ne sont pas
nécessairement les questions précises qui sont là
devant nous, mais qui sont de cet ordre-là. Ce
genre de questions pour connaître la nature de
l'entente c'est pour savoir c'est quoi cette
entente-là.

10 Et c'est important dans ce cas ici, Monsieur le
Juge, parce que l'entente, euh, l'autre partie n'à
donner aucune information sur la nature de cette
entente, excepter une chose : Les propose
15 assermenter de M. Rock ou il dit « J'ai décidé de
financer cette action sans limite ». En Anglais
c'était « Without a cap », le mot « Cap ».

20 Donc, toute l'information que j'ai pu avoir de
cette entente c'est que le président de
l'université à accepter de payer les frais et sans
limite. C'est toute l'information que j'ai. Et -
et je - je - je veux connaître la - la nature
réelle, pratique, de l'entente.

25 Et à la question 7, ça c'est la question, Monsieur
le Juge, qui est précisément celle qui est impacter
de façon primordiale par mon expert qui a été
exclus, pour des raisons techniques, par le Juge
30 Beaudoin. Donc, il est - il est, à mon sens,
impossible d'adresser cette question 7 sans avoir
une détermination juste qui n'est pas teinter par

une crainte raisonnable de partialité, par une apparence de conflit d'intérêt qui, à mon sens, est très forte, qui n'est pas teinter par ça. Sa prend une décision, une évaluation de « Est-ce que mon expert témoin, et son affidavit, peuvent être accepté? »

Si mon expert témoin est accepté, ça voudrait dire qu'il y a eu une communication directe entre M. Rock et M. Deardon. Et que cette communication était de la nature suivante....

LE TRIBUNAL: Mais ça c'est une question aussi baser sur une décision du Juge Beaudoin. Comme je viens de dire, moi je n'ai pas l'intention de casser une - sa - va faire partie de votre appel de sa décision. Donc, si il y a fait une décision, si il a fait erreur, bon...

M. RANCOURT: Mais, euh,....

LE TRIBUNAL: ...vous aurez votre remède à ce point-là.

M. RANCOURT: Oui.

LE TRIBUNAL: Ce n'est pas - ce n'est pas moi qui...

M. RANCOURT: Ca - ca, casser sa...

LE TRIBUNAL: ...qui....

M. RANCOURT: ...décision, Monsieur le Juge,....

LE TRIBUNAL: Je n'ai pas d'autorité de le faire. C'est ça je viens de le dire plusieurs fois que ce n'est pas mon rôle ici de - pas mon rôle de le faire.

M. RANCOURT: Non, et je ne vous ai pas demandé de faire ça.

LE TRIBUNAL: Non, non, bien....

M. RANCOURT: C'était très clair. Mais, euh, par rapport à cette question....

LE TRIBUNAL: Donc, c'est relier à cette - c'est relier à cette même question ça veut dire.

M. RANCOURT: Oui. Mais par rapport à cette question 7, Monsieur le Juge, ce que je demanderais, sans rejeter la décision de Juge Beaudoin, est-ce que vous pourriez donner un regard neuf sur l'affidavit de mon expert dans....

LE TRIBUNAL: Non, je ne peux pas...

M. RANCOURT: Pour - pour informer....

LE TRIBUNAL: ...faire la même - c'est une question de *res judicata*. On vient de passer à travers ce concept déjà. Donc, ça déjà été trancher.

THE COURT: I assume you're going to say that. I'm not going to - it's been decided by another judge. I'm not going to, uh,....

MR. DEARDON: It's my position, Your Honour, as you look at it, de novo. He's - he's bringing....

LE TRIBUNAL: I look at it di novo?

MR. DEARDON: He's bringing the - you see, this question now is directed at what he asked Joanne St. Lewis. So, go ahead, let him try to convince you that Louis Belliveau's so-called "Expert affidavit" meets the *Mohan* criteria.

My submission is it does not. There's no necessity. It's not relevant. And he doesn't have the qualifications.

So we'll make that argument when we get to issue

number 7 and you decide it di novo.

THE COURT: Okay. Well, then I'll decide it.

MR. DEARDON: As I said,...

THE COURT: Okay.

MR. DEARDON: ...I'm not relying on anything that Justice Beaudoin decided.

THE COURT: No, no, I can't. I can't deal with....

MR. DEARDON: And you can't either. So....

THE COURT: I can't. That's what I'm trying to say. I....

M. RANCOURT: Oui, mais je - je....

LE TRIBUNAL: Donc, il est d'accord que je peux la trancher.

M. RANCOURT: Mais je - je - je remercie M. Deardon de - de....

LE TRIBUNAL: Oui.

M. RANCOURT: Si j'ai bien compris, je veux juste être certain que j'ai bien compris, Monsieur le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Je vais donc essayer d'expliquer ce que j'ai compris.

LE TRIBUNAL: Oui.

M. RANCOURT: Est-ce que la question di novo qui va être traité, c'est à savoir si l'affidavit de mon expert est admissible ou pas? Ou est-ce....

LE TRIBUNAL: Mais ça de l'air qu'il veut que je tranche la même question a de nouveau. Mais...

M. RANCOURT: Parce que....

LE TRIBUNAL: ...si les deux parties sont d'accord, moi je vais vous....

M. RANCOURT: Okay, donc on parle de cette

question-là, n'est-ce pas?

LE TRIBUNAL: C'est ça, oui. Je ne sais pas si c'est même, est-ce que c'est la question 7?

THE COURT: Is this question 7?

5

M. RANCOURT: Oui.

MR. DEARDON: It goes to an email, Your Honour, that - or actually, it's an Outlook calendar, a Microsoft Outlook calendar appointment that was allegedly been sent by Allan Rock to me on March 30th, 2012, to attend a meeting a year earlier.

10

M. RANCOURT: C'est faux.

MR. DEARDON: And, yes - yes, you heard that correctly, Your Honour, is that that Outlook calendar appointment deals with an appointment for April 15th, 2011.

15

M. RANCOURT: Là, Monsieur le Juge,...

MR. DEARDON: A year earlier.

M. RANCOURT: Euh, M. Deardon est en train de faire l'argument qu'on se propose de faire di novo. Et donc, je m'objecte à ça.

20

LE TRIBUNAL: Okay, bien...

M. RANCOURT: Mais....

LE TRIBUNAL: ...je vais vous entendre dessus...

M. RANCOURT: Mais, mais, mais....

25

LE TRIBUNAL: ...mais pas les détails.

M. RANCOURT: ...je veux juste être clair sur - sur qu'est-ce qu'on va faire, parce que l'affidavit a été pas admis pour des raisons techniques. C'est-à-dire il manquait un CV et il n'y avait pas le formulaire 53 au moment où il l'a soumis. Mais, depuis ce temps-là, Monsieur le Juge, et c'est devant la Cour dans une autre motion, cette

30

affidavit a été utiliser dans une autre motion et ses défauts techniques ont été réparé. Et M. Deardon est au courant de ça.

5 Et donc, j'aimerais savoir - j'aimerais que ces défaut techniques puissent être admis si on va le regarder di novo.

MR. DEARDON: No, Your Honour - Your Honour....

M. RANCOURT: Mais....

10 MR. DEARDON: He's misleading you completely. We're dealing with the champerty's motion.

THE COURT: Right.

MR. DEARDON: And he put in an affidavit, which we'll call "Affidavit number one of Louis Belliveau", okay? And I objected to that affidavit on, not just the basis that there was no form 53 and independence of the expert to the court dealt with, I also dealt with what his qualifications were to even give this evidence and it wasn't
15 technical. I submitted *Mohan* criteria of relevance and necessity were not fulfilled. And that's what I'm gonna be submitting to you. That's affidavit number one.

25 Now what he's done, in the liable refusals motion that he's filed on his examination for discovery of Professor St. Lewis, is he's gotten Louis Belliveau to do "Affidavit number two". And all of a sudden, he's got Outlook experience. He's got Microsoft Outlook Calendar experience added in there. He's
30 got a CV in there.

It doesn't change his findings, though, with respect of this email or – or the Outlook appointment, rather, that is on March 30th, 2012.

5 So it wasn't technical in that he forgot to put a CV in. It was *Mohan* criteria was not met and that will be the argument that I'm making – gonna make to you.

10 M. RANCOURT: Oui, donc on est en train de parler de l'argument, mais je – je voudrais – je voudrais....

15 LE TRIBUNAL: Oui. Donc, selon M. – Maitre Deardon, ce n'est pas admissible pour d'autre critères. Pas juste la forme 53. Le fait que ça ne rencontre pas les critères établis dans l'arrêt *Mohan*.

M. RANCOURT: Oui. Mais j'aimerais – j'aimerais répondre à ça.

20 LE TRIBUNAL: Non, non, je vais – je vais vous entendre dès que vous fessiez vos représentations écrites.

M. RANCOURT: Mais vous venez d'entendre M. Deardon. Alors, j'aimerais répondre à ça.

25 LE TRIBUNAL: Bien, selon-lui, ce n'est pas question de pertinence et nécessité, ils ne sont pas...

M. RANCOURT: Oui. Et vous avez....

LE TRIBUNAL: ...peut-être questions de qualifications.

30 M. RANCOURT: Vous avez ça dans votre esprit. Et donc, je veux répondre immédiatement à ça.

LE TRIBUNAL: Okay, donc j'imagine, selon...

M. RANCOURT: Euh, qui est....

LE TRIBUNAL: ...vous c'est nécessaire et c'est -
et c'est pertinent.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc,...

M. RANCOURT: Alors, première chose....

LE TRIBUNAL: ... si ce n'est pas plus que ça, je
vais vous....

M. RANCOURT: Premièrement, Monsieur le Juge,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...euh, M. Deardon en mis en cause
les qualifications de mon expert. Mais sans avoir
contre-examiner son affidavit. Et j'ai présenté à
M. Deardon de la jurisprudence qui montre que quand
une avocate ne - n'examine pas un expert, il ne
peut pas ensuite mettre en cause ses
qualifications, etcetera, les choses qui sont dans
son affidavit. Donc, c'est très important ça.

Et deuxièmement...

LE TRIBUNAL: Okay.

M. RANCOURT: Et deuxièmement, euh, M. Deardon a
fait appel au « *Mohan* criteria », mais pour - pour
expliquer le *Mohan* criteria, il a utilisé sont
interprétation du sens de ses courriels plutôt que
celui de l'expert. Si on prend le sens de
l'expert, le *Mohan* criteria est parfaitement
satisfait.

Et donc, il y a une certaine, euh - un certain
problème que je pourrais qualifier, par manque de
meilleurs mots, « d'une certaine déshonnêteté ».

MR. DEARDON: I'm objecting, Your Honour,
because...

M. RANCOURT: Parce que....

MR. DEARDON: ...he's going back to what was said
before Justice Beaudoin and I'm not relying on
anything that happened before Justice Beaudoin.
You're dealing with this *de novo*.

LE TRIBUNAL: Okay. C'est de nouveau. Je vais
vous entendre de nouveau.

M. RANCOURT: Oui, et - et je vous aie signalé les
- (inaudible) qu'il y a dans les arguments de M.
Deardon. Il - il utilise un argument *Mohan* avec
une interprétation du document qui est devant nous
qui est contraire celle de mon expert, sans
admettre mon expert et sans avoir contre-examiner
mon expert. Chest can le problem.

LE TRIBUNAL: Okay, merci.

THE COURT: Mr. Deardon?

M. RANCOURT: Et là - non, non, non. Ça c'était
juste par rapport au tableau de refus. Mais....

LE TRIBUNAL: Oui.

M. RANCOURT: Je vous ai rappelez plutôt dans la
session aujourd'hui qu'il y a d'autres questions
qui n'avaient pas encore été tranché. Donc, je
veux juste faire un rappel.

LE TRIBUNAL: Oui. Mais c'est ça la....

M. RANCOURT: Juste....

LE TRIBUNAL: La seule question que moi j'ai
entendue c'était la question de refus.

THE COURT: Are we not just dealing with the
refusals?

M. RANCOURT: Non, non. Il y a des questions qui

étaient devant la Cour, Monsieur le Juge, je vous l'ai signalé tantôt. Il y a des questions qui étaient devant la Cour, devant le Juge Beaudoin, en plus des refus de Madame St. Lewis, qui n'ont jamais été décidé.

MR. DEARDON: What?

M. RANCOURT: Entre autre....

MR. DEARDON: What?

M. RANCOURT: Entre autre - oui, je vais le dire.

Entre autre, il y a une demander de radier certaines réponses d'un des témoins, du record.

LE TRIBUNAL: Ça c'est dans votre requête?

M. RANCOURT: Oui. C'est dans mon, euh - dans mon, euh, euh - dans ma - dans ma notice de la motion.

Et il y a une autre chose aussi, et je vais....

MR. DEARDON: Clarity. Sorry, just - just....

M. RANCOURT: Et - et - et....

MR. DEARDON: Clarity, clarity. Are we referring to Dean Feldthusen's re-examination that you're objecting to when you're saying there was something you're trying to strike out?

M. RANCOURT: Oui.

MR. DEARDON: That's the re-examination?

M. RANCOURT: Oui, c'est ça.

MR. DEARDON: And that's it?

M. RANCOURT: À ma mémoire, ça c'est une chose. Ça c'est une chose. Je n'ai pas dit que c'était tous. Euh, et honnêtement, Monsieur le Juge, je m'excuse, mais je sais qu'il y a une autre chose, mais en ce moment, j'ai un blanc de mémoire. Je me souviens pas c'était quoi. Il faudrait que je sorte mon document et puis le regarder.

LE TRIBUNAL: C'est dans - c'est dans l'avis de motion.

M. RANCOURT: Oui, oui.

LE TRIBUNAL: Ça doit être...

5 M. RANCOURT: Oui, oui, c'est dans...

LE TRIBUNAL: ...mentionner.

M. RANCOURT: ...l'avis de motion. Tout-à-fait.

Tout est là, mais - mais, c'était juste pour mettre devant la Cour aujourd'hui pour....

10 LE TRIBUNAL: Qu'il y a - il y a d'autres questions?

M. RANCOURT: Qu'il y a d'autres choses. C'est très important.

15 THE COURT: Mr. Deardon, there's a - those things, then, will be addressed? But they weren't addressed by Justice Beaudoin. Whatever's left of that motion I will deal with is my understanding.

MR. DEARDON: Yeah.

20 M. RANCOURT: Tout-à-fait. Et - et le Juge Beaudoin, Monsieur le Juge, avait dit "D'accord, on ferait ça après". C'est-à-dire que, au début, je me souviens au début de la session j'avais dit, « Bon, il y a sept questions puis il a les refus. Je ne sais pas lequel faire avant? » Juge Beaudoin a dit - donc, il est entrain de décider de qu'elle faire avant.

25 Et ensuite je suis allé dans les refus. Donc, il restait ces choses-là. Je vais de mémoire là, mais il avait - il y avait certainement d'autres choses qu'il avait à faire.

30 MR. DEARDON: I'm not remembering anything other

than the re-examination of Dean Feldthusen, Your Honour. I – I – and the seven...

THE COURT: Okay.

MR. DEARDON: ...issues that he has in the refusal chart.

THE COURT: Well, we'll see....

M. RANCOURT: Bien,....

THE COURT: We'll see them from your written submissions.

M. RANCOURT: Oui, tout à fait.

MR. DEARDON: Now, Your Honour, can we put a page limit of five pages for what is going to be filed on August 1st by Mr. Rancourt and me in reply?

M. RANCOURT: Non, absolument pas, Monsieur le Juge.

MR. DEARDON: No, no,....

M. RANCOURT: Je m'objecte à ça.

MR. DEARDON: Your Honour,...

M. RANCOURT: Euh,....

MR. DEARDON: ...this is why I wanted it orally. Because this is never-ending with this defendant.

M. RANCOURT: On a....

MR. DEARDON: And he's – he's gonna – five pages is plenty. The refusals chart is 10. You're allowing him to do oral argument and then some follow-up. So five pages is totally reasonable, and it doesn't have to be – he's not gonna do it in column form, so he's got a lot more space on five pages. It's gonna be like a factum.

M. RANCOURT: Entendez-moi, Monsieur le Juge, avant de prendre votre décision, s'il vous plait?

Aujourd'hui, j'ai procéder sous la – l'entente que

je pouvais faire des soumissions sans limite.

Évidemment, mes soumissions...

LE TRIBUNAL: Non, je n'ai jamais, jamais...

M. RANCOURT: Non....

LE TRIBUNAL: ...dit ça.

M. RANCOURT: Non, non, vous n'avez pas dit sans limite.

LE TRIBUNAL: Il n'y a pas de question.

M. RANCOURT: Non, mais je veux dire vous n'aviez pas imposé une limite.

LE TRIBUNAL: Je ne suis pas d'accord. Ca j'ai - la Cour d'Appel impose des limites de demi-heure. Donc, vous avez eu amplement de temps.

M. RANCOURT: Oui, mais, Monsieur le Juge,...

LE TRIBUNAL: Je ne suis pas d'accord avec ça.

M. RANCOURT: Monsieur le Juge, ce que je veux dire c'est qu'il n'y avait pas, dans mon esprit, une limite qui était imposé. Et cinq pages c'est trop court. J'ai cinq pages quand je fais une demande pour les coûts. Je veux dire, ça n'a pas d'allure.

Je vais être très raisonnable. Je vais être très succinct. Je vais donner juste mes arguments principaux. Mais je - je pense qu'une limite de cinq pages...

LE TRIBUNAL: Mais il y a - il y a quatre....

M. RANCOURT: ...n'est pas raisonnable.

LE TRIBUNAL: Okay, donc il y a sept questions pour trancher, 14 pages. Limiter à 14 pages. C'est une question de refus de questions. Il faut qu'on complete - 15 pages.

THE COURT: We'll take two minutes - a five-minute

break and then we can come back.

MR. DEARDON: Yes.

THE COURT: Do you anticipate being lengthy?

MR. DEARDON: Uh, I....

THE COURT: Or do you need to - to....

MR. DEARDON: I'm gonna limit it to 20 minutes, Your Honour.

THE COURT: Okay. Okay, let's take 15 minutes.

R E C E S S

U P O N R E S U M I N G:

THE COURT: Mr. Deardon?

MR. DEARDON: Your Honour, uh, I'm gonna be out of town, in Chicago, on Tuesday through to next Sunday and then go immediately to Montreal until the following Thursday. So I'm making oral submissions to you now in detail because you may not be receiving much from me on August the 6th, in reply to Mr. Rancourt's 14 pages. Or it will be very minimal at any rate, because I'm just not around.

Um, could I just first deal, Your Honour,....

M. RANCOURT: Je - je - j'aimerais m'objecter pour dire si c'est le cas que la limite de page pour M. Deardon devrait être beaucoup plus petite.

LE TRIBUNAL: Non, mêmes...

MR. DEARDON: Oh, come on.

LE TRIBUNAL: ...limites. Non, non.

MR. DEARDON: Come on.

LE TRIBUNAL: M. Rancourt,...

M. RANCOURT: Mais,....

LE TRIBUNAL: M. Rancourt,....

M. RANCOURT: D'accord. Il vient - il vient d'expliquer qu'il allait faire des présentations détailler.

LE TRIBUNAL: M. Rancourt - M. Rancourt,....

MR. DEARDON: Well, they could be less than 14 pages, Your Honour, and I expect that they will. But I don't know what he's gonna write in his 14 pages, and I may have to address it when I'm out of town. But I'm hoping that my main points are made right now.

THE COURT: Okay.

MR. DEARDON: So, Your Honour, I'm gonna go backwards from what Mr. Rancourt was dealing with. He first had mentioned that he was challenging....

THE COURT: Just - just before - so - what is it that I should have in front of me?

MR. DEARDON: Yeah, so you should - you should have....

THE COURT: Maybe - maybe I should - I should - because I know there's a pile of materials here. I've read, I think your materials that you've submitted. I've read Mr. Rancourt's motion and there had been some letters, some people filing them. So what is it that I should....

MR. DEARDON: The only thing you need, Your Honour, you have a responding motion record of Joanne St. Lewis, which has our factum in it and the refusals chart. So that's a blue two-tabbed document, "Responding motion record, Joanne St. Lewis, Defendant's refusal motion champerty". It's this.

THE COURT: So the "Plaintiff's compendium of

arguments”?

MR. DEARDON: Well, you have that in the – in....

THE COURT: Okay. “Respondent motion of Joanne St. Lewis”?

MR. DEARDON: “Responding motion record of Joanne St. Lewis”, is that two – yeah, two tabs. I think that’s it, Your Honour. Does it have our factum at tab 1?

THE COURT: “Factum” tab 1.

MR. DEARDON: Okay. And then Mr. Rancourt has a factum.

THE COURT: Okay. Where is that?

M. RANCOURT: En fait j’ai – il y a deux documents qu’on peut considérer un « Factum ». Un que j’ai appelé « Compendium of arguments » qui est beaucoup plus petit. Et un factum qui est plus important.

THE COURT: Book of authorities, plaintiff’s book of authorities, transcripts. I’m sorry, “Request for costs thrown away”, which you should respond to, Mr. Rancourt, as well as in your submission.

LE TRIBUNAL: Il y a une demande pour des dépens. Il y a une demande de dépens qui a été déposée hier. Je ne sais pas si vous avez eu ces documents. Je vois que....

M. RANCOURT: Je – je ne veux pas la contrainte de répondre à ça en même temps, parce que c’est trop de travail dans les quelques jours que j’ai.

LE TRIBUNAL: Okay. Tu aurais 15 jours.

M. RANCOURT: Il me faut....

LE TRIBUNAL: Quinze jours, 15 jours à répondre à ça. Mais,....

THE COURT: Are these costs thrown away – these are

- were these for the....

MR. DEARDON: July 24th proceeding.

THE COURT: July - you were seeking that before Justice Beaudoin?

MR. DEARDON: No.

THE COURT: These costs thrown away motions?

MR. DEARDON: No, remember yesterday....

THE COURT: That was yesterday.

MR. DEARDON: Yesterday, I handed you up...

THE COURT: Okay.

MR. DEARDON: ...costs thrown away. And I did serve Mr. Rancourt with it yesterday.

THE COURT: Okay, so that is, uh,....

MR. DEARDON: That's the July 24th proceedings.

THE COURT: Costs thrown away.

LE TRIBUNAL: M. Rancourt, vous avez....

THE COURT: You've responded to that.

M. RANCOURT: Euh, non. Non, non.

THE COURT: This must be - « Costs thrown away submission of defendant ». Or is that a different matter?

MR. DEARDON: It's a different one, Your Honour.

M. RANCOURT: C'est - c'est autre chose.

LE TRIBUNAL: Okay, ça c'est une autre affaire.

MR. DEARDON: There's - there's (ph) three - Your Honour, if I give you the history, there's (ph) three costs thrown away applications. Two of them were under reserve by Justice Beaudoin. And they were with respect to back in January when Master McLeod refused an adjournment that Mr. Rancourt wanted to hold a case management conference.

He then came back from the break and said he wanted everything done in French. And so there's a cost thrown away on that.

5 Then he had written us an email....

THE COURT: But that's not one that I'm dealing with.

LE TRIBUNAL: Ca ce n'est pas de mes affaires.

MR. DEARDON: Somebody has to.

10 M. RANCOURT: Puisque - puisse que vous être maintenant le juge pour la cause...

LE TRIBUNAL: Ah, okay.

M. RANCOURT: ...Monsieur le Juge, j'imagine que ça va tomber sur vous.

15 LE TRIBUNAL: Okay. Ah, bon.

MR. DEARDON: Well, it's not necessarily so, Your Honour.

20 THE COURT: We'll wait and see what happens with whatever Beaudoin, Justice Beaudoin is writing or if he's writing something. Is he writing something?

25 M. RANCOURT: Non, il n'y a aucune - en fait, ce qu'il a dit très clairement - il a dit très clairement qu'il n'aurait plus rien à faire avec mes causes qui me touchent. Il a dit ça devant la Cour.

THE COURT: Okay. Is this....

MR. DEARDON: I've written Justice....

30 THE COURT: Is this your factum, "Defendant's refusal motion"? That's for discovery.

MR. DEARDON: He has one, Your Honour, "Moving party's factum, refusals motion, champerty", which

should have nine tabs. White cover, dated June 11. It looks like this. It's thicker.

THE COURT: Okay, July 18th, no?

MR. DEARDON: June 11th, "Moving party's factum, refusals motion, champerty", it's white covered. Well, there'll be boxes of materials in this case, Your Honour, so I'm not surprised if it isn't on your desk.

THE COURT: It doesn't seem to be here.

"Plaintiff's motion record"? No. So what I should have is, "Respondent's motion record"?

MR. DEARDON: Yes.

THE COURT: "Champerty"?

MR. DEARDON: Then the "Compendium of argument" that I handed to you today, which is July 27, 2012. July 27, because there was another compendium I used before Justice Beaudoin on June 20th, Your Honour.

THE COURT: Okay, the 27th?

MR. DEARDON: Yeah.

THE COURT: And then you have a "Plaintiff's refusals undertaking chart", is that....

MR. DEARDON: Yeah, that was separate to work with it, to make it easier.

THE COURT: Don't need that.

MR. DEARDON: That's liable, that's the liable case. You don't need that.

THE COURT: Liable case, okay. "Responding record", so I do need Mr. Rancourt's responding record, factum.

M. RANCOURT: Euh, vous - vous parlez donc de la motion pour les refus, n'est-ce pas?

LE TRIBUNAL: Oui.

M. RANCOURT: Alors, je veux signalez....

MR. DEARDON: Yeah, champerty.

M. RANCOURT: Je veux signal (ph) - je peux
signalez les choses, les documents, d'après moi,
qui sont pertinentes.

LE TRIBUNAL: Okay.

M. RANCOURT: Il y a un, euh,....

MR. DEARDON: Mr. Rancourt, I have them handy and
we can expedite things. So you can just tell His
Honour.

M. RANCOURT: Il y a - il y a....

MR. DEARDON: You have a « Moving party's motion
record, refusals motion" and it is, um, 346 pages.
So most of this has been dealt with by Justice
Beaudoin, because it's U of O witnesses, but
somewhere in here there will be the material
regarding the refusals of Joanne St. Lewis.

But he also has the factum, Your Honour, that I
already mentioned that has nine tabs and it's dated
June 11th. He also has exhibits of the cross-
examination of certain affiance, which is, again,
white cover. It's the examination of Celine
Delorme. So that shouldn't be relevant at all to
Joanne St. Lewis. So that - that, you don't have
to....

And then he has a moving - "Moving party's book of
authorities" for the - which is dated June the
20th. And there are 15 tabs in the book of
authorities.

5 M. RANCOURT: Euh, il y a - il y a aussi les
procès-verbaux en par suivit pour Madame St. Lewis,
et les exhibits qui - qui sont attacher à cette
examination. Ça fait partie de ce qui devra être
devant vous.

Et il y a aussi, euh, le "Compendium of argument"
que j'avais préparé pour la séance du 20 juin. Qui
est un petit livret datée le 20 juin je crois.

10 THE COURT: Is there more material filed somewhere?

COURT REGISTRAR: Uh, no, Your Honour, that's all
that we had, uh, (inaudible) in your office.

15 THE COURT: Okay, well if I - the, uh - the
"Plaintiff's book of authorities", that's the
plaintiff's. "Book of authorities of the
plaintiff", the plaintiff's - I think I only have
the plaintiff's stuff it appears. I don't know if
I have Mr. Rancourt's materials.

20 Okay, well I know that maybe, I'm not sure, Madam
Registrar, if you can find these things?

COURT REGISTRAR: Certainly, I will try to....

25 THE COURT: And if you can't, advise Mr. Rancourt
to provide a copy of them, an extra copy of them to
me.

COURT REGISTRAR: Okay, I can call....

LE TRIBUNAL: Avez-vous une autre copie?

30 M. RANCOURT: Non, je pense qu'il manque dans la
pile, le « Compendium of argument » du 20 - voilà,
vous l'avez là, Monsieur le Juge.

LE TRIBUNAL: Okay.

M. RANCOURT: Il y a ça. Euh, donc, pour résumer,

il y avait un « Book of authorities » un « Factum »
un « Motion record »...

LE TRIBUNAL: Oui.

M. RANCOURT: Un « Compendium of arguments »...

LE TRIBUNAL: Oui.

M. RANCOURT: Et il y a...

THE COURT: The transcripts.

M. RANCOURT: ...le procès-verbal de tout le monde.

LE TRIBUNAL: Oui.

M. RANCOURT: Et avec les exhibits [sic] pour
chacun, de tout le monde. Euh, une autre chose....

LE TRIBUNAL: Oui.

MR. DEARDON: Only - only need to know that Joanne
St. Lewis, um, transcript, Your Honour. She was
cross-examined April 23rd and Bruce Feldthusen was
also examined on April 23rd. So there's (ph) two
separate transcripts.

So, Your Honour, I just wanted to briefly deal with
Mr. Feldthusen's - Dean Feldthusen's, um - Mr.
Rancourt has submitted that my re-examination of
Bruce Feldthusen was improper. And I - if you make
a note, Your Honour, in our factum, um, paragraphs
28 to 32 deals with this.

Two of the questions that he objected to, he never,
uh - in the refusals motion, he never objected to
during the re-examination. And one of them was
completely proper re-examination in my opinion.
And in the compendium I've just given you, Your
Honour, so in the pages in issue of the transcripts
so you needn't find them. I thought I put them in

the compendium this - the compendium of July 27th,
tab 5.

I've set out my re-examination on pages 48 and 49
of Dean Feldthusen's transcript. So tab 5 in
paragraphs 28 to 32 is all you need to deal with
Mr. Rancourt's objections about the re-examination.

COURT REPORTER: Excuse me, Mr. Deardon, can I just
get the Dean's spelling of his name please?

MR. DEARDON: Um, F-E-L-D-T-H-U-S-E-N.

COURT REPORTER: Thank you very much.

MR. DEARDON: Yes, as I mentioned, Your Honour, my
factum's in tab 1 of our "Responding motion
record". So that's that issue, Your Honour.

I'd also now like to deal with this issue of number
7, which is this Outlook Calendar appointment. If
you could turn, Your Honour, to tab 4 of my
compendium, the issue number 7 and the question
that Mr. Rancourt's asked us to provide all email
communications with Allan Rock that are relevant to
this litigation, it's exhibit two to the cross-
examination of Joanne St. Lewis. So you should
have at tab 4 that exhibit two, Your Honour, of the
compendium. This is a compendium of....

THE COURT: I have - yes, exhibit two, I have that
here.

MR. DEARDON: Exhibit two. So the next page, Your
Honour, you should see an email header with "Joanne
St. Lewis" at the top.

THE COURT: Yes.

MR. DEARDON: And if you just go down under,

“Organizer” that says, “Allan Rock”, you see “Hi, Joanne, can you print out a copy of this appointment for me off your computer please?” Do you see that?

THE COURT: Yes.

MR. DEARDON: And then underneath that is the email, or the Outlook Calendar appointment. So it’s from Allan Rock, sent March 30th, 2012, so this year, to Richard Deardon and Allan Rock. And it’s about a meeting that is April 15th, 2011. Okay.

So my submission on the qualifications of Mr. Rancourt’s, uh, so-called expert, who is a lawyer who lives in New Brunswick, who I was certainly not going to cross-examine in New Brunswick, and nor am I obligated to examine a so-called expert. He has to be qualified and he has to get through the “Gatekeeper” role of you, Your Honour, to be qualified.

And my submission is that affidavit - first of all, he’s not qualified at all in that affidavit to deal with Microsoft Outlook Calendar appointments like you see here. And the evidence is completely irrelevant that he deals with whether the email’s authentic or not.

He does not provide any qualifications about the functionality of Outlook Calendar appointments, Your Honour. And what I mean by that, on functionality, is what happens when an email - when

an Outlook Calendar appointment is forwarded by somebody who isn't originally invited to the meeting?

5 So this, for instance, the April 15th, 2011 meeting, I'm not originally invited to that meeting. There's no dispute about that. But what happens, this expert doesn't give you any assistance about what happens when Joanne St. Lewis
10 forwards an appointment from her Outlook Calendar to me or anybody else, and that anybody else opens it up, what does Outlook do in terms of who now is showing to be part of that meeting? And you have nothing like that.

15 But my main submission, Your Honour, was - my main submission on this expert who's called "Louis Belliveau" is that - he - this affidavit doesn't meet the criteria of *Mohan, R. v. Mohan*, on
20 relevancy and necessity. And that's - the site for *Mohan* is 1994, 2 SCR 9, at paragraph 17. The four *Mohan* criteria, which Your Honour's well aware of, is set out in paragraph 17 of the *Mohan* decision of the Supreme Court of Canada.

25 There is no relevance and there is no necessity to have this evidence from this witness to decide whether email communications with Allan Rock should be produced. And my submission on that, Your
30 Honour, is on its face, you can see that this appointment that I'm supposedly for a meeting a year earlier is just absolutely absurd.

5 It's absurd that Allan Rock would be inviting me to
a meeting that occurred a year earlier. The
significance of April 15th, 2011, by the way, Your
Honour, is that's the day that Joanne St. Lewis,
Dean Feldthusen, and Allan Rock met where the
decision was taken to fund the liable action
against Mr. Rancourt. That's the significance of
that date.

10 So you see in our refusals chart I've submitted
that an alleged appointment from President of the
University of Ottawa to me, sent a year after the
meeting in which Allan Rock agreed that the
15 university would pay the plaintiff's legal fees in
the liable action, is completely irrelevant to the
issues in the champerty motion.

20 And make note, Your Honour, that Mr. Rancourt
cross-examined President Rock for hours, and in my
submission, him seeking emails from - that Allan
Rock sent because there's supposedly an email sent
March 30th, 2012, a year after the events, is
nothing more than a fishing expedition and it
25 should be rejected. That's all it is, is a
fishing expedition.

30 So I'll go to now, Your Honour, the - what I - what
I think is important background for you and what
we're dealing with here. And that's if you could
turn to - for what is the pleading in issue in this
champerty motion? You'll find it at tab 1 of the

compendium.

5 This is Mr. Rancourt's notice of motion. So tab 1
of the compendium. You'll see a - the motion is
for, so the second page in, the motion is for "An
order that the action be stayed or dismissed on the
grounds that the action is vexatious or otherwise
an abuse of process."

10 You see that he pleads in paragraph 4, "The
defendant denies that his criticism of the
plaintiff's work for the university was defamation
at law and takes the position that the action is
champartous (ph) and improperly financed using
15 public money".

20 If you flip over to paragraph 6, the pleading is
"That an action should be stayed or dismissed as an
abuse of process because it is based on champartous
agreement as established at law. When maintenance
and champerty are demonstrated, the courts have
ruled the remedy to be a stay or dismiss the
action, including at the Court of Appeal for
Ontario". Well he completely misinterprets the
25 Court of Appeal cases he's referring to.

30 But here is a quick summary of the law of
champerty, Your Honour. I've given you extracts at
tab 2. It's an Ontario Court of Appeal decision in
McIntyre. And I've highlighted paragraphs 26 to
28. And that - this is - this is champerty, okay.
I'm at paragraph 26:

5 “Although the type of
conduct that might constitute champerty and
maintenance has evolved over time, the
essential thrust of the two concepts has
remained the same for at least two
centuries. Maintenance is directed against
those who, for an improper motive, often
described as wanton or officious
intermeddling, become involved with
10 disputes (litigation) of others in which
the maintainer has no interest whatsoever
and where the assistance he or she renders
to one or the other parties is without
justification or excuse. Champerty is an
egregious form of maintenance in which
there is the added element that the
maintainer shares in the profits of the
litigation. Importantly, without
15 maintenance there can be no champerty.”

20 Paragraph 27:

25 “The courts have made clear that a person’s
motive is a proper consideration and,
indeed, determinative of the question
whether conduct or an arrangement
constitutes maintenance or champerty. It is
only when a person has an improper motive
which motive may include, but is not
30 limited to, “officious intermeddling” or
“stirring up strife”, that a person will be
found to be a maintainer.”

And then paragraph 28 cites a previous Court of Appeal decision in *Buday*, and it highlights:

“There must be present in champerty as in maintenance an officious intermeddling, a stirring up of strife, or other improper motive.”

Now, champerty itself, Your Honour, is not a defence. It’s not a defence. What Mr. Rancourt is seeking to do to get a stay is there’s circumstances where there can be an abuse of process if there’s trafficking in litigation. That might result in a stay or dismissal.

Champerty itself isn’t – doesn’t – it doesn’t do that. It’s not a defence to the liable action. But if there is an abuse of process with trafficking in litigation, there might be a possibility of a stay.

So I’ve put at tab 3, Your Honour, the decision of Justice Cullity in *Operation 1 Inc. v. Phillips*. And you see at paragraphs – I’ve highlighted paragraphs 45 through to 47. And then paragraph 54.

So he gives a bit of the history in paragraph 45 of the Court of Appeal in England about this issue. And if you go to paragraph 46 of the decision, Justice Cullity finds:

5 "Although these more recent English
authorities were not referred to at the
hearing of the motions, the reasoning of
Morritt L.J. supports the submission of
defendant's counsel that a conclusion that
the proceedings involved "trafficking in
litigation" could justify a finding of
abuse of process."

10 And he goes on to say that's consistent with the
McIntyre case which I just took you to. And then
he cites, in paragraph 47, that in the *Gdanska*
case:

15 "Where it was accepted that trafficking in
litigation - that connotes " an unjustified
buying and selling of rights to litigation
where the purchaser has no proper reason to
20 be concerned with the litigation" - may
constitute an abuse of process while
champerty that fell short of this would
not, where it was accepted that trafficking
in litigation"

25 So that's - that's in a nutshell, Your Honour, what
guides you in terms of what's relevant to what Mr.
Rancourt is trying to fish for from Joanne St.
Lewis, in her cross-examination.

30 Is there trafficking in litigation? Is the
question relevant to trafficking in litigation?

And I submit none of his questions that he's got under the refusals motion are.

5 Now you have the refusals motion, Your Honour, um, which is at tab 7. So let's deal with issue number one. And I've put categories on mine. I'm - the issues that he - the description that Mr. Rancourt's given, in my respectful submission, don't quite capture what the question is that's in
10 issue.

Um, the first question you see there is tenure....
M. RANCOURT: Excusez-moi. Ou est-ce qu'on est en
15 ce moment?

MR. DEARDON: I'm in the refusals chart.

M. RANCOURT: Okay. C'est quel onglet?

MR. DEARDON: Tab 7.

M. RANCOURT: Okay.

MR. DEARDON: Tab 7. You're with me, Your Honour?

20 M. RANCOURT: Monsieur le Juge, ça fait deux....

THE COURT: Yes, issue one, vulnerability of the plaintiff?

MR. DEARDON: Yeah, issue one.

25 M. RANCOURT: Ca fait plus de 20 minutes que M. Deardon, euh, progresse. Il est en train de faire tous l'argument qu'il avait prévue. Et je veux juste m'objecter formellement. Je vais continuer, mais en grande opposition.

30 Je suis opposé à ce - a - a - on avait - on était d'accord sur le processus qu'on allait suivre aujourd'hui. Et maintenant on est en train de le -

de le - le bafouer complètement.

LE TRIBUNAL: Okay, bon, je lui donnerais un autre cinq minutes.

THE COURT: Can you wrap up in five minutes?

MR. DEARDON: Yes, Your Honour.

THE COURT: Okay, five minutes.

MR. DEARDON: Because what I'm gonna do is - is give you what the title should be.

THE COURT: Yes.

MR. DEARDON: So issue number 1: Asking Joanne St. Lewis about when she applied for tenure. That's a tenure question. There's no issue. She got tenure in 2001. Mr. Rancourt admits that now. He's corrected the blog in issue. It's completely irrelevant as to whether there is trafficking in - in litigation.

The promotions are completely irrelevant. She got tenure in 2001. And the agreement that we're dealing with here in - that he alleges is champartous, is April 15th, 2011. Ten years later, okay.

If you flip to page two of the chart, the question 76, 78, that's graduate work. I've got written, as a title to that question, 76, 78, "Graduate work".

What on earth would whether she was enrolled in a graduate degree program have to do with trafficking in litigation is beyond me.

The - the next issue, number 2, Your Honour, which

is described as the plaintiff's "inclination or intent to litigate" actually isn't. Those questions there, Your Honour, on page 3, they're really intent to litigate over a December 6th, 2008 blog. And I would ask Your Honour to underline the question where he says, "Did you get the email dated September - or December 7th, 2008?"

That's over a blog that he wrote on December 6th, 2008, and it's not part of the liable action or cause of action.

The blogs that are the cause of action for liable, that are in issue in the liable action in which the funding was agreed to, are 2012 blogs. There are two blogs, one in February, 2012, and one in May, 2012; so all these questions are completely irrelevant to the liable action that's being funded.

Now if you flip the page, Your Honour, so you're on page....

THE COURT: So this is for the champerty? We're really on the champerty motion?

MR. DEARDON: Yeah. So what....

THE COURT: So it's not relevant to the liable, but/or to the champerty.

MR. DEARDON: Or it's a champerty.

THE COURT: But this is really champerty?

MR. DEARDON: Yeah, it's not - it's completely irrelevant to the champerty motion.

THE COURT: To either.

MR. DEARDON: It's not even in play in the action that's being funded. That's why I mention it.

THE COURT: Okay.

MR. DEARDON: But the action that's being funded is with blogs in 2012. Not this December of 2008 blog. So those questions cannot have any relevance to the champerty motion.

The next page, on page 4 Your Honour, I call this the "House Negro, February 11, 2011 blog". This one is in issue in the liable action and it is subject to the funding. That's what he's dealing with. But what he's dealing with are really questions about the liable action. These are examination for discovery questions. It doesn't have anything to do with trafficking in litigation. Whether Joanne St. Lewis received his email that, "Here's my House Negro blog on February 11, 2011".

That's all going to time limitation, the defence that he - he has in his statement of defence, which is an examination for discovery question.

The next page is, you know, "The best defamation lawyer in town", completely irrelevant. As is the plaintiff's financial resources, which he deals with on page 5 and 6 of this chart. And you have my submissions in the column. But I'd also ask you to make a note of remembering what *Operation 1* said at paragraphs 47 and 54; there has to be trafficking in litigation. This is a non-issue, a non-issue.

5 So I just ask you to – to note what the basis for the refusal is in the column in that, Your Honour. But that – so that’s my – the points I’m drawing to your attention on whether or not the plaintiff could afford this litigation.

10 M. RANCOURT: Monsieur le Juge, ça fait plus de cinq minutes. Et en plus, les – ce que M. Deardon est en train de faire est beaucoup plus détailler de ce que j’ai fait. Il va question par question. Et je – si j’ai bien compris....

LE TRIBUNAL: Non, mais c’est un choix. C’était un choix aux parties.

15 M. RANCOURT: Si j’ai bien compris, aujourd’hui je n’ai pas le droit de répondre, n’est-ce pas?

LE TRIBUNAL: Non, non. On va avoir vos représentations par écrite. Okay.

THE COURT: That’s it?

MR. DEARDON: Yeah.

20 THE COURT: Okay. So you’ll ensure that ive got these materials.

COURT REGISTRAR: Yes, Your Honour.

25 THE COURT: Because I have – I’ll take with me “Responding Motion Record”, « Gowlings & Henderson Compendium » and if you can find the balance. I don’t know if I have Mr. Rancourt’s documents?

M. RANCOURT: Bien, ils sont devant la Cour c’est clair.

30 LE TRIBUNAL: Bon, ce n’est pas clair à moi, parce que j’ai regardé et je ne les voie pas. Peut-être c’est moi qui ne les voie pas.

M. RANCOURT: Bien ils sont peut-être dans le –

dans le bureau de M. Beaudoin, je ne sais pas.
Mais, je les ai – je les ai définitivement mis
devant la Cour.

LE TRIBUNAL: Okay, mais j'aimerais les regarder
avant de prendre ma décision. C'est une bonne
chose. Okay.

M. RANCOURT: J'aimerais que vous les ayez tous de
suite si c'est possible.

LE TRIBUNAL: Oui, bon.

THE COURT: You'll look for that, okay, thank you.

COURT REGISTRAR: Yes, Your Honour.

MR. DEARDON: Your Honour, sorry, a procedural
question.

THE COURT: Yes.

MR. DEARDON: Or a point of information question.
I did not that, at the beginning of proceedings,
you indicated you had been assigned case
management....

THE COURT: I've been assigned as the case
management judge. But I should tell you that I'm
not here the last (ph) of August. I'm away on
holidays. So there may be someone else assigned, I
don't know.

MR. DEARDON: That's – that's what the point I was
gonna make, because, Your Honour, I'm in Africa
most of the month of September. And I have written
Regional Senior Justice Hackland a letter saying
there are two other refusals motion, we've just
dealt with the champerty refusals motion, but then
there's a refusals motion in the liable examination
for discovery that I did with Mr. Rancourt. And he
has one on Joanne St. Lewis.

And I would very much like those to be dealt with by anybody who's a bilingual judge, in the month of August, before things....

THE COURT: I have no objection, whatsoever, to that occurring.

M. RANCOURT: Moi j'aurais une grande objection à faire.

LE TRIBUNAL: Avec tous les respects à tous les parties.

M. RANCOURT: Non, non, Monsieur le Juge,....

THE COURT: So I'm not involved in the administration of the - so you know, I'm on....

LE TRIBUNAL: Moi je suis sur des vacances.

Donc,....

THE COURT: I will respond to these and your materials on my holidays. but whether - who hears the motion, if it's heard or whether there are other matters, I mean, I leave that to you and Mr. Rancourt, or you and Justice Hackland, or....

MR. DEARDON: It's a Regional Senior Justice who's got to decide.

THE COURT: Right.

MR. DEARDON: Yeah.

THE COURT: So it's not my decision, so....

MR. DEARDON: Okay.

THE COURT: And I've got no objection, whatever, whatever the result is.

M. RANCOURT: Mais moi j'ai des objections, évidemment.

MR. DEARDON: Thank you, Your Honour.

LE TRIBUNAL: Pardon?

M. RANCOURT: Moi j'ai beaucoup d'objections.

LE TRIBUNAL: Ah, bien là....

M. RANCOURT: Mais ça c'est une autre chose.

LE TRIBUNAL: Mais ça ce n'est pas devant moi.

M. RANCOURT: Oui.

LE TRIBUNAL: Ce n'est pas à moi à décider ces choses-là.

M. RANCOURT: Mais je croyais que - c'est parce que le Juge Beaudoin prenait une approche très forte par rapport à la gestion de la cause.

LE TRIBUNAL: Oui.

M. RANCOURT: Et il déterminait tous les dates et tous.

LE TRIBUNAL: Oui.

M. RANCOURT: Et donc, si je comprends bien, vous allez prendre une approche beaucoup plus libre, n'est-ce pas?

LE TRIBUNAL: Ah, je n'ai pas dit ça.

M. RANCOURT: Non?

LE TRIBUNAL: Moi, aujourd'hui, j'ai à faire cette motion.

M. RANCOURT: Oui.

LE TRIBUNAL: Mais il n'y a pas d'autre conférences, il n'y a pas d'autres demandes. Moi je réponds aux questions que j'ai à répondre.

THE COURT: So if there's further scheduling to be done, if I am still, or if he decides to appoint an out of jurisdiction judge - but as I've understood it, I've been appointed as the case management judge of this matter.

But I'm not here for the month of August. So that

is a reality that will have to be dealt with. I'm
- I'm - the motion, it's - I think Justice Beaudoin
probably was here, or going to be here at the end
of - there is a motion date.

5 M. RANCOURT: Oui, il y avait une date le - le 29
aout.

MR. DEARDON: July 24th, those two - well the three
motions were to be argued before Justice Beaudoin.
The date's been fixed for months.

10 THE COURT: So I don't know. I'm not here. I
don't know if - and it won't be Justice Beaudoin.
So whether it's someone else or - I don't know. I
can't - I'm not sure if that was raised with
Justice Hackland or....

15 MR. DEARDON: I did. I did in the letter...

M. RANCOURT: Monsieur le Juge,....

THE COURT: Okay.

M. RANCOURT: Monsieur le Juge,....

MR. DEARDON: ...pointed out that....

20 M. RANCOURT: J'ai - j'ai eu la chance de regarder
le calendrier. Je veux juste être très spécifique.
Cinq jours a partir d'aujourd'hui ça nous mène au
1^{er} aout. Et cinq jours au-delà de ça nous mènent
au 6 aout?

25 LE TRIBUNAL: Oui.

M. RANCOURT: Merci.

LE TRIBUNAL: C'est ça. Okay.

MR. DEARDON: Yes.

THE COURT: Very good, thank you.

30 MR. DEARDON: Thank you, Your Honour.

* * * * *

COURT IS ADJOURNED

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SEPTEMBER 02, 2012
(Date)

RENEE COMMODORE
COURT REPORTER

COUR SUPÉRIEURE DE JUSTICE
(DIVISION CIVILE)

E N T R E :

JOANNE ST. LEWIS

(Demanderesse)

E T

DENIS RANCOURT

(Défendeur)

CONFÉRENCE RELATIVE À LA CAUSE

ENTENDUE DEVANT L'HON. JUGE ROBERT J. SMITH
Jeudi, le 27 septembre 2012, à Ottawa

Comparutions:

R. Dearden

Avocat pour la Demanderesse

P. Doody

Avocat pour l'Université d'Ottawa

D. Rancourt

Pour lui-même

COUR SUPÉRIEURE DE JUSTICE

(DIVISION CIVILE)

T A B L E D E S M A T I È R E S

À la page

Discussion concernant matières de
procédure et réservation des dates
pour avoir des motions entendues

1

TRANSCRIPTION DEMANDÉE LE: 29 sept. 2012
DEMANDE REÇUE LE: 29 sept. 2012
TRANSCRIPTION COMPLÉTÉE LE: 08 oct. 2012
AVIS DONNÉ LE: 09 oct. 2012

**Jeudi,
le 27 septembre 2012.**

(10h34)

5

THE COURT: Good morning.

Bonjour.

10

MR. DOODY: Good morning. Your Honour, just before we begin, if I could just say this: there's been a history in this case of time being monopolized by Mr. Rancourt and spending long beyond the allotted time. We were told that there was one hour set for this case conference...

THE COURT: Yes.

15

MR. DOODY: ...and in my respectful submission, that time should be divided equally among the three counsel – and stuck to.

THE COURT: Equally or half/half?

MR. DOODY: At Your Honour's discretion.

20

THE COURT: Okay.

M. Rancourt, est-ce que vous avez des...

M. RANCOURT: Oui. Ben, je...

LE TRIBUNAL: ...représentations à ce point-là?

25

M. RANCOURT: ...je m'objecte à cette caractérisation par rapport à mon comportement pour prendre le temps, mais je – je serais d'accord pour avoir environ la moitié du temps.

LE TRIBUNAL: Moitié à vous, moitié aux deux procureurs.

30

M. RANCOURT: Tout à fait.

LE TRIBUNAL: Oui.

M. RANCOURT: Merci.

LE TRIBUNAL: Peut-être avec un peu de discrétion aux deux procureurs parce qu'y en a deux.

So, Madam Registrar, you'll keep track of the time.

COURT REGISTRAR: Certainly, Your Honour.

THE COURT: This is a good.... Because I have difficulty doing that.

Moi, j'ai de la difficulté de le faire. Donc, 30 minutes chacun, d'abord.

M. RANCOURT: M. le Juge,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...j'aimerais commencer avec quelque chose.

LE TRIBUNAL: Oh, mais ça c'est.... Attends minute.

M. RANCOURT: Oui.

LE TRIBUNAL: Pis on va finir ici.

M. RANCOURT: Oui. Alors j'aimerais commencer....

LE TRIBUNAL: Donc vous voulez aller en premier?

M. RANCOURT: J'aimerais, oui. Il y a – il y a un point que j'aimerais soulever immédiatement parce que ça vient d'arriver.

C'est que juste avant qu'on est – qu'on est pris, en l'intermédiaire entre les deux sessions, parce qu'il y avait un cas criminel avant le nôtre, M. Dearden nous a donné une lettre, que je viens de recevoir ce matin, et j'aimerais signaler à la Cour que à mon sens, cette lettre, la façon qu'elle est construite, pourrait mener à – à induire la Cour en erreur.

Alors j'aimerais juste regarder cette lettre et vous signaler...

LE TRIBUNAL: Oui.

M. RANCOURT: ...ce que je vois comme étant des erreurs.

LE TRIBUNAL: Oui.

M. RANCOURT: Alors premièrement,
5 M. Dearden parle des motions qui sont devant la Cour et il donne des numéros 1, 2, 3, 4; et j'aimerais vous signaler que ce que M. Dearden appelle 1 et 2, en fait c'est une seule motion. C'est une motion...

10 **LE TRIBUNAL:** Oui.

M. RANCOURT: ...pour demander la permission d'aller en appel sur plusieurs décisions qui en partie sont les vôtres, en partie sont celles du Juge Beaudoin, mais c'est une seule motion que j'ai mis
15 devant la Cour. Ce n'est pas deux motions séparées.

Et ça c'est un point très important parce que le contenu est par rapport à une crainte raisonnable de partialité. Ça c'est la motion. Et le tout va
20 ensemble. C'est une seule motion. Donc je voulais que ce memo de M. Dearden induise la Cour en erreur sur cette question-là.

LE TRIBUNAL: Okay.

M. RANCOURT: Okay?

25 Et deuxièmement, il y a....

LE TRIBUNAL: Je crois c'est l'intention de Me Dearden de mettre les trois demandes pour permission de porter appel – de mettre les trois ensemble, si j'ai bien compris son horaire.

30 **M. RANCOURT:** Mais, M. le Juge, mon point c'est qu'il y en a pas trois; il y en a deux.

LE TRIBUNAL: Oui, mais....

M. RANCOURT: Il y a deux motions. Il y a deux....

LE TRIBUNAL: Oui, mais il y a – il y a trois décisions. Donc Maître..... De toute façon, ils vont être tranchés tout en même temps.

M. RANCOURT: Je ne sais pas, M. le Juge.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: L'horaire n'a pas....

LE TRIBUNAL: Oui, oui. La demande – vous avez trois demandes, selon je peux voir.

M. RANCOURT: Alors....

LE TRIBUNAL: Moi, j'ai pas vu vraiment vos demandes d'appel. J'ai pas vu ces documents-là.

M. RANCOURT: D'accord.

Donc il y a....

LE TRIBUNAL: Si vous avez....

M. RANCOURT: Il y a... Il y a une autre chose que M. Dearden n'a pas mis dans sa liste.

LE TRIBUNAL: Okay.

M. RANCOURT: Il y a aussi une demande....

LE TRIBUNAL: On va – on va – on va arrêter cette affaire de critiquer,...

M. RANCOURT: Non.

LE TRIBUNAL: ...soit M. Dearden ou vous de critiquer la lettre. Lui a dit ça; lui a dit ça; moi je dis ça. Faut – faut qu'on – ça c'est un *case* – conférence de gérance du cas. Donc moi je vais établir des étapes des procédures à faire, que Monsieur.... Je veux pas avoir des critiques de un ou l'autre.

M. RANCOURT: Non. Je veux pas...

LE TRIBUNAL: Okay, donc....

M. RANCOURT: ...critiquer, M. le Juge.

LE TRIBUNAL: Donc....

M. RANCOURT: Je veux simplement mettre les faits devant la Cour qui sont pas...

LE TRIBUNAL: Donc....

M. RANCOURT: ...complets...

LE TRIBUNAL: Okay.

M. RANCOURT: ...dans ce que vous avez devant vous.

LE TRIBUNAL: Non. Mais donc, vous êtes d'accord qu'on devrait avoir une audience pour une demande d'appel – de permission de porter appel – pour la décision du Juge Beaudoin. La décision que vous appelez – je crois c'est pas une décision, mais décision dans ma lettre du 31 juillet. C'est une question. Pis troisièmement, ma décision sur les – la question du 6 septembre.

Donc ça, vous avez le droit de faire. Je serais pas le juge de – qui va entendre ces demandes d'appel. C'est un autre juge.

M. RANCOURT: C'est-à-dire on parle des trois demandes d'appel telles que vous...

LE TRIBUNAL: Oui.

M. RANCOURT: ...les avez énumérées. Vous ne serez pas le juge...

LE TRIBUNAL: Non.

M. RANCOURT: ...qui va entendre ça.

LE TRIBUNAL: Non, non. Ben sûr.

M. RANCOURT: D'accord.

LE TRIBUNAL: Je sais pas si vous avez.... Mais de toute façon,...

M. RANCOURT: Mais il y a....

LE TRIBUNAL: Mais c'est juste de fixer une date.
Le point c'est de fixer une date pour ces trois événements-là.

M. RANCOURT: Il y a déjà des dates de fixées...

LE TRIBUNAL: 'Kay.

M. RANCOURT: ...par le registraire, M. le Juge.

LE TRIBUNAL: Okay. Mais c'est ça que....

The dates, Mr. Dearden, you've listed – yeah,
there's a date in the system of the 21st of
November.

M. RANCOURT: Le 22 novembre. Ça....

LE TRIBUNAL: Vingt-deux?

M. RANCOURT: Oui.

LE TRIBUNAL: Ou le 21?

M. RANCOURT: Je crois que c'est le 22,...

LE TRIBUNAL: Vingt-deux?

M. RANCOURT: ...si je me trompe pas.

THE COURT: Is the 22nd of November – is a
date that Mr. Rancourt has taken with the Registrar
or.... I'm not sure....

MR. DEARDEN: Which, Your Honour, he wasn't
supposed to do, according to what the Regional
Senior Justice said – is that no date was to be set
for a motion....

THE COURT: However, it's not in stone. So it
has to be an agreeable date. He has booked that
date somehow through Mr. Lacky. Ah, what's his
last name? – Elie.

MR. DEARDEN: Labaky? Labaky.

THE COURT: Labaky. Labaky. So is the 22nd. I
know you've listed up to November 5th to 9th. If

the 22nd is available.... It seems to be booked in the system.

MR. DEARDEN: But only for two hours, Your Honour.

THE COURT: Ah.

MR. DEARDEN: He's used dates for....

THE COURT: Okay.

MR. DEARDEN: He also has October 18th as - as a date for his leave-to-appeal hearing...

THE COURT: But I'm...

MR. DEARDEN: ...of Justice Beaudoin's...

THE COURT: ...going to put them...

MR. DEARDEN: ...rulings.

THE COURT: ...all together.

MR. DEARDEN: Yes.

THE COURT: I think that's all I....

MR. DEARDEN: We agree.

LE TRIBUNAL: J'ai indiqué ça.

I've indicated that all three will be heard at the same time.

MR. DEARDEN: Yes.

M. RANCOURT: M. le Juge, il y en a quatre.

THE COURT: A fourth?

M. RANCOURT: Parce que....

LE TRIBUNAL: Un quatre?

M. RANCOURT: Oui.

LE TRIBUNAL: Quatrième? Sur quoi?

M. RANCOURT: C'est pour ça je voulais vous donner d'abord les informations.

Alors la quatrième, c'est une motion pour *stay pending leave to appeal*.

LE TRIBUNAL: Mais ça, vous pouvez porter – ça vous les portez devant moi.

M. RANCOURT: Cette motion....

LE TRIBUNAL: Ça c'est une autre....

M. RANCOURT: Je crois que ça doit aller devant....

THE COURT: A stay....

M. RANCOURT: À mon sens, ça devrait être entendue par un autre juge, parce que c'est un *stay pending leave to appeal* qui est par rapport à votre décision.

THE COURT: No. I think it can be decided by me.

MR. DEARDEN: What he wants is a stay, Your Honour. What....

THE COURT: A stay on what?

Sous quel – quel....

M. RANCOURT: Ben, la motion a déjà été écrite et elle est claire sur ce qui est demandé et pourquoi c'est demandé. Et cette motion est cédulée pour le 18 octobre.

LE TRIBUNAL: Stay sur quelle chose? Parce que....

M. RANCOURT: C'est-à-dire c'est une demande pour que le processus dans la motion de champartie n'avance pas...

LE TRIBUNAL: Non.

M. RANCOURT: ...avant que les...

LE TRIBUNAL: Bon. C'est ça qui a....

M. RANCOURT: ...les motions....

LE TRIBUNAL: Non, non. Non, non, non. Ça c'est pas nécessaire.

M. RANCOURT: D'accord.

LE TRIBUNAL: *The....* Les questions – sur les refus de certaines questions, bon, c'est – selon moi et le Juge Beaudoin, c'était justifié. Il y a rien. Et surseoir, c'est pas nécessaire parce qu'il y a rien de positif qui était ordonné.

M. RANCOURT: D'accord. Si...

THE COURT: So I – I've indicated I don't see the need for a stay because the refusals were held to be justified. I'm just translating. Perhaps you've already got that.

MR. DOODY: Actually, I can say the translation is excellent, Your Honour.

THE COURT: Okay, good. Good.

M. RANCOURT: Donc, juste pour clarifier, M. le Juge....

THE COURT: So do you see any need for a stay? I'm assuming not.

MR. DOODY: Your Honour, I don't see any need for a stay simply because nothing's happening.

THE COURT: Exactly.

MR. DOODY: The leave application is going to be scheduled.

THE COURT: Right.

MR. DOODY: I would've thought the champerty motion would be scheduled to take place after the leave application.

THE COURT: Correct.

MR. DOODY: So there's nothing happening,...

LE TRIBUNAL: Oui.

MR. DOODY: ...nothing to stay.

M. RANCOURT: M. le Juge, si....

LE TRIBUNAL: Non.

M. RANCOURT: Si on est d'accord que vous, en tant que le juge qui gère la cause,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...ne va pas – vous acceptez de ne pas faire avancer les choses avant que ces...

LE TRIBUNAL: Non, non.

M. RANCOURT: ...appels-là soient entendus,...

LE TRIBUNAL: Oui, c'est ça.

M. RANCOURT: ...alors...

LE TRIBUNAL: C'est ça.

M. RANCOURT: ...je suis d'accord dans ce cas-là que ce n'est pas nécessaire.

LE TRIBUNAL: C'est ça.

M. RANCOURT: Sauf que – bon, c'est que il y avait – il y avait une poussée agressive pour faire avancer les choses malgré mes demandes. C'est pour ça que j'ai senti le besoin de mettre cette motion.

LE TRIBUNAL: Non – pas nécessaire.

M. RANCOURT: D'accord. Je suis d'accord avec ça.

Maintenant il y a un autre....

LE TRIBUNAL: Okay. Mais là, la date – est-ce que le 22, qui a....

Is it available to counsel? And I'll check. We'll call Mr. Lakaby. [sic] Maybe we'll get him...

MR. DEARDEN: No.

THE COURT: ...on the phone and we'll set a date – we'll fix a date now.

MR. DEARDEN: Your Honour, November 22nd is the day before the CCLA Litigation...

THE COURT: In...

MR. DEARDEN: ...Conference in...

THE COURT: ...Montebello.

MR. DEARDEN: ...Mont Tremblant...

5 **THE COURT:** Right.

MR. DEARDEN: ...and many of us go up on the Thursday,...

THE COURT: Right.

MR. DEARDEN: ...November 22nd. So it's...

10 **THE COURT:** Not a good day.

MR. DEARDEN: ...not a good day.

THE COURT: Okay.

15 **MR. DEARDEN:** But, Your Honour, if I could, what you see in the List of Motions Pending document is that it's our submission that Mr. Rancourt has had plenty of time to prepare his facta on all three of his leave applications and this was, if we go back in history – the champerty motion itself on its merits was supposed to be argued on August 29th. And that is why Mr. Doody and I are submitting to the Court that the dates that I have suggested for a one-day argument be a lot earlier than November 22nd. So October 23.

20 **LE TRIBUNAL:** Est-ce que vous êtes d'accord si – s'il y a des dates de procéder avant?

25 **M. RANCOURT:** Mais je – je suis pas d'accord que j'ai eu le temps jusqu'à maintenant de faire les factums qui sont nécessaires. Cette caractérisation, je ne l'accepte pas, parce qu'y a eu toutes sortes de choses. Il y a eu des costs *throw-away*. Il y a eu des costs décision'. Il y a eu plein d'affaires. Et j'étais très occupé. Et je n'ai pas – je peux dire à la

30

Cour – que les documents pour ces choses-là ne sont pas prêts et que j'ai besoin du temps pour les préparer. Ça, je veux rendre ça très clair. C'est – c'est incontournable.

LE TRIBUNAL: Oui. Mais c'est...

M. RANCOURT: Et....

LE TRIBUNAL: ...une demande de permission de porter appel. Ça prend pas si long que ça.

M. RANCOURT: Ça exige...

LE TRIBUNAL: Oh.

M. RANCOURT: ...un *factum*...

LE TRIBUNAL: Oui.

M. RANCOURT: ...et – et – et c'est une demande compliquée et j'ai besoin du temps pour le préparer. Ça c'est clair. Je veux pas qu'on m'impose des dates qui seraient pas raisonnables parce que y a eu.... M. Doody a parlé d'une histoire dans ce cas. L'histoire dans ce cas, c'est que le côté opposant a constamment essayé de m'imposer des dates qui sont beaucoup trop contraignantes, qui me donnent quelquefois juste quelques jours pour préparer les choses, qui est pas raisonnable. Alors, je demande à être raisonnable. Mais j'ai besoin de, typiquement, M. le Juge – je vais être très clair – quand il y a un *deadline* pour rendre un gros document, j'aurais besoin, minimum, d'une semaine avant ce *deadline* pour préparer et finaliser ce document. Je crois que c'est une demande très raisonnable et ça sous-entend que il y a pas d'autre cas qui intervienne dans cette semaine-là qui m'empêche de faire mon travail, comme ça était le cas dans le passé.

LE TRIBUNAL: Okay.

M. RANCOURT: Je demande juste que ça soit raisonnable. Je pense que vous comprenez mon inquiétude.

LE TRIBUNAL: Donc, est-ce que – est-ce que les dates aux 5 au 9 novembre, est-ce qu'elles sont disponibles?

M. RANCOURT: Ahhh.

LE TRIBUNAL: Je sais pas si elles sont disponibles avec M. Lakaby. Mais mettons....

Before we call Mr. Lakaby, why don't we set out some times? You have some times proposed here, I think.

MR. DEARDEN: And, Your Honour, could I just make a brief submission though on what...

THE COURT: October 18th, you propose?

MR. DEARDEN: ...Mr. Rancourt has told you about the time he needs for preparing a factum? – because I think this is important for the Court to know.

I'm going to hand Your Honour an August 8th letter that Mr. Rancourt wrote to Elie Labaky, the Trial Co-ordinator, about how long it would take him to prepare facta in his leave application.

And you will see in the third paragraph of the letter, he says:

"I intend to proceed with the motion for leave to appeal quickly; and, assuming that there are no other motions or deadlines to interfere with my preparation, I am ready to file my factum in seven days from the date I receive the transcripts necessary for the motion." [as read]

5 So I wrote him an e-mail, Your Honour, of August 21st, which firstly dealt with the July 24th transcript as the last transcript that Mr. Rancourt needed to deal with the leave application involving Justice Beaudoin's rulings. And, to make a long story short, I told him rather than wasting time alleging that I misinterpreted his letter of August 8th, "you should be working on your facts, which you have already had weeks to prepare."

10 That's August 21st, Your Honour.

Then on September the 5th, I e-mailed Mr. Rancourt again because we had now received the remainder of....

15 **THE COURT:** But let's – just before we go there, is the 18th of October agreeable to you?

Est-ce que vous êtes d'accord avec le 18 pour préparer vos documents? On est le...

MR. DOODY: Eighteenth of October.

M. RANCOURT: Non. Non. Non, M. le Juge.

20 **LE TRIBUNAL:** ...27.

M. RANCOURT: Pour le simple....

LE TRIBUNAL: Parce que c'est plus que sept jours.

25 **M. RANCOURT:** Oui. Écoutez, M. le Juge. C'est pour la simple raison que maintenant vous ajoutez une autre motion à la même date qui est une grosse motion que j'avais planifié prendre le temps nécessaire pour la préparer plus tard. Et donc....

30 **LE TRIBUNAL:** Oui, mais on parle de deux semaines. Ces affaires de – des motions pour porter appel sur des ordonnances *interlocutory*, à l'intérieur d'une cause, ce sont des affaires – faut

que ça soit fait assez rapide. Le temps limite selon les règles, c'est de 7 jours, si je me....

M. RANCOURT: Monsieur....

LE TRIBUNAL: Donc....

M. RANCOURT: M. le Juge, il y a – il y a....

C'est....

LE TRIBUNAL: Mais là, ici – avant le 18 octobre, on est – ça c'est trois, quasiment trois semaines.

M. RANCOURT: M. le Juge, ce n'est – ce n'est pas trois semaines parce qu'il y a – j'ai un temps de vacances familial que je ne peux pas changer parce que j'ai une fille qui habite en Europe qui vient juste pour ce temps-là. On a déjà des plans de voyage. Et j'ai, donc, un bloc de jours où je dois être absent. Et donc – et en plus, vous me dites maintenant, aujourd'hui, que ce même jour-là, alors que j'ai déjà planifié mon travail en prenant compte des vacances – ce même jour-là, vous mettez maintenant une autre motion, qui est une grosse motion.

LE TRIBUNAL: Quelle autre motion? Quelle autre motion? Quelle autre motion?

M. RANCOURT: Celle qui était pour le 22, vous – vous voulez la mettre pour le 18 maintenant.

LE TRIBUNAL: Non, non, pas la motion – vos documents, vos facta.

M. RANCOURT: Oui. Alors....

LE TRIBUNAL: Pour le 18 octobre.

M. RANCOURT: Ahhh.

LE TRIBUNAL: Parce que je vise le 5 au 9....

M. RANCOURT: Ah, d'accord.

LE TRIBUNAL: Je vise les dates de 5 au 9. Ça vous donne trois semaines.

M. RANCOURT: J'avais mal compris,
M. le Juge.

LE TRIBUNAL: Pour vos documents.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc, vous êtes – vous serez....

M. RANCOURT: Pour que les documents soient
– le 18,...

LE TRIBUNAL: Oui.

MR. DEARDEN: ...je suis d'accord.

LE TRIBUNAL: Vos documents.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est vos facta sur les trois –
s'il y en a trois – je sais pas s'il y en a deux ou
trois, mais pour toutes vos demandes de porter
appel.

M. RANCOURT: Oui, je suis d'accord avec ça.

THE COURT: So, Mr. Dearden and Mr. Doody – I
might refer to one of you – it's not the two – but
the 18th for his documents, he's agreeable to that.
That's your number – your date. I'm using your
sheet.

MR. DOODY: Well, actually, that date – that
date was for us to file, assuming it was argued on....

THE COURT: Oh, that was for you to file.

MR. DOODY: But – but if he....

THE COURT: Oh, I see.

MR. DOODY: If he argues....

THE COURT: Okay. I see.

MR. DOODY: If he files on the 18th –...

THE COURT: Yes.

MR. DOODY: ...if we're targeting a day some-
time between the 5th and the 9th,...

THE COURT: Fifth and the 9th.

MR. DOODY: ...the 18th should work, I would think. And then – and then we would have to file...

THE COURT: By....

MR. DOODY: ...the requisite time period prior to whatever the date is.

THE COURT: You'd be like....

M. RANCOURT: M. le Juge, y a – y a juste....

LE TRIBUNAL: Oui.

M. RANCOURT: Y a un petit problème...

LE TRIBUNAL: Oui.

M. RANCOURT: ...avec ceci. C'est que je ne vois pas pourquoi je devrais donner mes documents plus que sept jours avant la date qu'on choisit.

LE TRIBUNAL: Non, non, non, non, non, non, non. On va gérer ça. Vous avez les trois semaines. Eux-autres, ils auraient un bout de temps pour répondre.

But so, let's....

Madam Registrar, can you call Mr. Lakaby and see if there's a judge in the 5th to 9th? It might be our conference. We might have our conference that week.

COURT REGISTRAR: Well, Your Honour, the....

MR. DOODY: Un juge bilingue.

LE TRIBUNAL: Un juge bilingue. Ça va prendre un juge bilingue.

I think it's our conference week.

M. RANCOURT: Est-ce qu'on parle du 5 au 9 novembre, M. le Juge?

MR. DEARDEN: One second, Mr. Rancourt.

LE TRIBUNAL: Oui, je parle du 5 au 9 novembre.
C'est une date indiquée.

I think.... I'm not.... Is that our conference week?

GREFFIÈRE DU TRIBUNAL: Je vais vérifier,
Votre Honneur.

MR. DEARDEN: While contact's being made as
to availability of justices, Your Honour, can I make
a – be clear here, 'cause there's a couple of times
that Mr. Rancourt has been saying, "But I have this
other motion." We're talk'....

THE COURT: No. I think – I've told him he's
not bringing another motion.

MR. DEARDEN: There is no other motion.

THE COURT: Well, he had – he was bringing a
motion to stay the – whatever – pending appeal,
but I don't think there was anything to stay.

MR. DEARDEN: But he had a bias motion that
was scheduled for October 18th. It shouldn't have
been scheduled for October 18th,...

THE COURT: A bias motion....

MR. DEARDEN: ...and that's what I'm making
sure he doesn't think he's proceeding with on
October 18th when he was resisting the October
18th date.

My understanding, Your Honour, is we have three
leave applications. They're all going to be heard at
the same time...

THE COURT: Same date.

MR. DEARDEN: ...by the same judge,...

THE COURT: Correct.

MR. DEARDEN: ...one-day hearing, and – and
we're looking for a date...

THE COURT: Yes.

MR. DEARDEN: ...right now.

THE COURT: Correct.

MR. DEARDEN: And that's it.

THE COURT: That's it. But I said the 18th – I thought it was a stay motion. I didn't know it was a bias motion.

MR. DEARDEN: Yeah. The stay motion was – he had set down for September 13th, when I was in Tanzania. And that got....

THE COURT: Canceled.

MR. DEARDEN: We got word from the Court that there's not going to be anything...

M. RANCOURT: Je peux indiquer...

MR. DEARDEN: ...happening September 13th.

LE TRIBUNAL: Oui.

M. RANCOURT: ...parce qu'il y a un malentendu.

LE TRIBUNAL: Oui.

M. RANCOURT: M. Dearden a raison. Il y avait aussi une motion pour crainte raisonnable de partialité.

LE TRIBUNAL: Oui.

M. RANCOURT: Mais cette motion, par lettre vous avez décidé de l'enlever. Donc, je respecte cette décision-là, mais je vais en appel.

LE TRIBUNAL: Non. La question....

M. RANCOURT: Je suis allé en appel de cette décision-là.

LE TRIBUNAL: Oui.

M. RANCOURT: Et donc je suis d'accord que cette motion a été arrêtée. C'est pour ça que je suis allé en appel.

LE TRIBUNAL: Okay. Ça c'était la motion que vous avez portée juste à la dernière minute avant la motion – le refus. C'est ça?

M. RANCOURT: Non. Ça, c'était une autre motion, M. le Juge. Il y a eu ici une motion le jour avant qu'on s'est rencontré le 26. Peut-être que vous faites référence à cette motion-là.

LE TRIBUNAL: Oui, c'est ça. C'est ça.

M. RANCOURT: Ça, c'est autre chose.

LE TRIBUNAL: Ça c'est une autre affaire.

M. RANCOURT: Ça, c'était pour argumenter qu'on ajourne pour le – le 27. Et cette motion-là aussi, vous l'avez ajournée.

Mais il y a eu avant ça une motion. Je peux vous dire la date qu'elle a été servie. Il y a eu une motion pour une détermination judiciaire de crainte raisonnable de partialité, et cette motion-là, par lettre, vous l'avez enlevée. Vous l'avez – "*dismissed*," on dit en anglais.

MR. DOODY: The July 31st letter, Your Honour.

LE TRIBUNAL: Pardon?

MR. DOODY: It's the July 31st letter issue.

MR. DEARDEN: That you wrote.

MR. DOODY: That's what – that's what Mr. Rancourt's talking about.

THE COURT: Okay.

MR. DEARDEN: When you told him you had no jurisdiction...

THE COURT: To....

MR. DEARDEN: ...as a single judge.

THE COURT: To hear an appeal

MR. DEARDEN: To hear an appeal.

Divisional Court does that.

THE COURT: That's correct.

MR. DEARDEN: And he needed leave. And now he's – now he's got that.

THE COURT: So....

MR. DEARDEN: That's number two...

THE COURT: That's....

MR. DEARDEN: ...on the list.

LE TRIBUNAL: Mais ça, vous pouvez porter appel sur ces décisions-là.

M. RANCOURT: M. le Juge, juste....

LE TRIBUNAL: C'est ça que je suis d'après – vous – établir une erreur pour en arriver à ce but. Donc je ne sais pas s'y a déjà une autre motion d'écart'.. ça.

M. RANCOURT: Donc, pour résumer,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...je suis d'accord avec M. Dearden. Cette motion, à mon sens, ma position, c'est qu'elle a été enlevée par votre décision; et je vais en appel de votre décision. C'est une – c'est une des motions...

LE TRIBUNAL: Okay.

M. RANCOURT: ...pour *leave to appeal* – faire appel à cette décision-là. Et ça, c'est déjà – cette demande pour permission d'appel, maintenant on cherche une date entre le 5 et le 9 novembre.

LE TRIBUNAL: Pour les trois. Vous dites...

M. RANCOURT: Oui.

LE TRIBUNAL: ...que mon...

M. RANCOURT: Oui.

LE TRIBUNAL: ...– ma lettre du 31 juillet, c'est une décision sur quelque chose? Je supporte donc

ça – si vous pouvez porter appel. Mais moi – sais
quoi – c'est pas une décision, mais vous êtes libre
de...

M. RANCOURT: Oui.

LE TRIBUNAL: ...argumenter que ce l'est, une
décision.

M. RANCOURT: Oui.

LE TRIBUNAL: Mes questions: Est-ce que c'était
une décision? De quelle sorte?

GREFFIÈRE DU TRIBUNAL: Votre Honneur....

THE COURT: Yes. Is Mr. Lakaby there?

GREFFIÈRE DU TRIBUNAL: Oui. J'ai télé-
phoné M. Labaky.

THE COURT: Labaky.

GREFFIÈRE DU TRIBUNAL: Il m'a dit que le 5
et le 9.....

THE COURT: Well....

GREFFIÈRE DU TRIBUNAL: Entre le 5 et le 9,
c'est la conférence.

LE TRIBUNAL: C'est le – *the judges' conference*.

COUR REGISTRAR: Oui.

THE COURT: It's our conference.

Next week? The week following?

GREFFIÈRE DU TRIBUNAL: *Is it – pour – pour*
une motion pour tous....

MR. DEARDEN: Can't we go the week before,
Your Honour?

MR. RANCOURT: No.

THE COURT: Week before?

MR. DEARDEN: I didn't...

GREFFIÈRE DU TRIBUNAL: C'est une
motion....

MR. DEARDEN: ...ask you.

THE COURT: Okay.

MR. DEARDEN: Is there any way of looking the other way, Your Honour – closer to today as opposed to further to today?

M. RANCOURT: Ça va me donner.... Ce sont de grosses motions.

LE TRIBUNAL: Mais vous êtes au 18.

M. RANCOURT: Je suis....

LE TRIBUNAL: Vous êtes au 18.

M. RANCOURT: Je suis auto-représenté, M. le Juge,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...et ça va me donner la chance d'une certaine justice...

LE TRIBUNAL: Okay.

M. RANCOURT: ...si nous rapprochons pas les choses.

LE TRIBUNAL: Okay.

M. RANCOURT: Comme ils ont toujours essayé de faire. Et ensuite, ils me mettent des demandes additionnelles – dans le même temps que j'ai pour préparer. C'est l'histoire de ce cas.

LE TRIBUNAL: Okay.

M. RANCOURT: Je veux simplement une justice.

LE TRIBUNAL: Okay.

M. RANCOURT: Et je – je veux pas qu'on rapproche les dates.

LE TRIBUNAL: Okay.

GREFFIÈRE DU TRIBUNAL: C'est pour cinq jours de motion, Votre Honneur?

LE TRIBUNAL: Non, non, non.

GREFFIÈRE DU TRIBUNAL: Seulement un?

LE TRIBUNAL: Une journée.

GREFFIÈRE DU TRIBUNAL: Okay.

THE COURT: For one day.

MR. DEARDEN: Bilingual judge.

THE COURT: Leave to appeal. Has to be a bilingual judge.

COURT REGISTRAR: Okay.

MR. DEARDEN: Your Honour, just in response to what you heard: remember that Mr. Rancourt represented to the Trial Co-ordinator that he only needed seven days to do a facta [sic]...

THE COURT: Right.

MR. DEARDEN: ...once he had the transcript. He has had weeks. He resiles from representations he makes whenever it suits him, and has had weeks to prepare a factum. And now he's trying to delay this as close to Christmas as he can get – on just the leave – so that he can get the champerty motion not argued until the other side of Christmas. And that is unfair, in my respectful submission, and there is no way...

LE TRIBUNAL: Attends.

MR. DEARDEN: ...that he can't be ready...

LE TRIBUNAL: Attends. Attends.

MR. DEARDEN: ...to – to argue this in the month of October, in my respectful view.

THE COURT: Well, that's possible. We might move his date back to the 15th. How much time do you need from his materials?

M. RANCOURT: De quoi est-ce qu'on parle, M. le Juge?

LE TRIBUNAL: Juste un instant.

COURT REGISTRAR: Votre Honneur, le 30 octobre?

MR. DEARDEN: Ten days?

THE COURT: Okay. Thirtieth of October?

MR. DEARDEN: That works for me, Your Honour.

MR. DOODY: I'm not available the 30th or the 31st, Your Honour.

THE COURT: Okay. So....

M. RANCOURT: M. le Juge....

THE COURT: Is he on speaker phone? Can we put him on speaker phone? Put him on speaker phone so he can hear us and we can....

Mr Lakaby?

TRIAL CO-ORDINATOR: Labaky. But....

THE COURT: Labaky. I'm sorry.

TRIAL CO-ORDINATOR: Good morning.

THE COURT: Good morning.

So what we're trying to -- so the 30th does not work, of October. Your next available date, I guess, not in....

TRIAL CO-ORDINATOR: Your Honour, I have November 15th.

THE COURT: November 15th?

TRIAL CO-ORDINATOR: Yes. November 15th. It's after the NJI [ph] week.

LE TRIBUNAL: Okay.

Mr. Doody, Mister....

TRIAL CO-ORDINATOR: We could also do...

THE COURT: Just a second.

TRIAL CO-ORDINATOR: ...November 16th, which is the Friday. So the 13th and 15th of November or Friday, the 16th of November.

THE COURT: Okay.

MR. DEARDEN: And that's a bilingual judge?

TRIAL CO-ORDINATOR: Yes. We can have that arranged.

MR. DEARDEN: And, Your Honour, the date that the facta of – and motion record of Mr. Rancourt...

THE COURT: Well,...

MR. DEARDEN: ...would be what?

M. RANCOURT: Est-ce qu'on pourrait faire...

THE COURT: ...I mistakenly....

M. RANCOURT: ...une chose à la fois, M. le Juge?

THE COURT: Just – just a second.

So I had given him the 18th. I had mistaken the 4th. I was thinking that date.

So your date would be what? – by November the 1st or something?

MR. DEARDEN: Yeah. He....

THE COURT: Or it could be....

MR. DEARDEN: His motion record and facta...

THE COURT: Everything.

MR. DEARDEN: ...for all three leave...

THE COURT: Right.

MR. DEARDEN: ...applications, October 18th. Ours, November 1st?

MR. DOODY: Would it be poss'.. – given – if we're going to argue it on the 15th, could I ask for the 2nd, Your Honour?...

THE COURT: The 2nd is fine.

MR. DOODY: Which is the Friday.

THE COURT: The 2nd. For the 18th,
November 2nd.

Donc, vous êtes d'accord avec cette date?

The 16th or 15th – which do you prefer?

MR. DEARDEN: Fifteenth, Your Honour.

THE COURT: Fifteenth?

MR. DEARDEN: Yes.

MR. DOODY: Fifteenth.

M. RANCOURT: Donc pour résumer, si je
comprends bien....

THE COURT: Mr. Labaky,...

TRIAL CO-ORDINATOR: Yes, Your Honour.

THE COURT: ...we'll take the 15th.

TRIAL CO-ORDINATOR: The 15th of
November, Your Honour?

THE COURT: Yes, for a day.

TRIAL CO-ORDINATOR: Perfect. Thank you,
Your Honour.

THE COURT: Thank you. And it's not me you're
scheduling.

TRIAL CO-ORDINATOR: No. Of course not.

THE COURT: Okay, good.

MR. DOODY: Nor Justice Beaudoin.

THE COURT: Oh, is it?

MR. DOODY: No, not – not Justice Beaudoin
either.

THE COURT: Nor Justice Beaudoin.

MR. DEARDEN: Well, actually, are we allowed
to know, Your Honour?

THE COURT: No. I'm not going to tell anybody.

MR. DEARDEN: Well, that – this is why I'm saying...

THE COURT: I'm not telling.

MR. DEARDEN: ...it can't be Justice Métivier either.

TRIAL CO-ORDINATOR: Okay.

THE COURT: Okay.

TRIAL CO-ORDINATOR: Not Métivier, not Beaudoin, not Justice Smith.

THE COURT: That's right.

TRIAL CO-ORDINATOR: Perfect.

THE COURT: Okay.

M. RANCOURT: Pourquoi pas Métivier? Est-ce que je pourrais savoir la raison, s'il vous plaît?

LE TRIBUNAL: Okay, moi, je sais pas.

M. RANCOURT: Non. Mais M. Dearden pourrait nous dire pourquoi?

THE COURT: Well....

M. RANCOURT: Parce que je ne veux pas...

THE COURT: No.

M. RANCOURT: ...une situation où un côté peut choisir le juge.

LE TRIBUNAL: Non, non, c'est pas une question de.... J'imagine qu'il y a un conflit ou un intérêt de quelque sorte.

M. RANCOURT: Mais j'aimerais la connaître, M. le Juge.

MR. DEARDEN: I just spent three weeks in Tanzania with Madam Justice Métivier.

THE COURT: Okay. So that's a good enough reason.

MR. DEARDEN: Well, maybe that's not going to look good on the record. And her husband...

THE COURT: Oh.

MR. DEARDEN: ...and my wife.

THE COURT: Right. Right. Okay, that's a -
bonne clarification. Good clarification.

5 **M. RANCOURT:** Merci. J'apprécie beaucoup
cette clarification.

LE TRIBUNAL: C'est bien.

M. RANCOURT: Donc si je comprends bien, les
documents....

10 **THE COURT:** So....

M. RANCOURT: Les documents de M. Dearden
vont être dûs le 1^e novembre et ceux....

LE TRIBUNAL: Deux - 2 novembre.

M. RANCOURT: Le 2 novembre.

15 **LE TRIBUNAL:** Le 2 novembre.

M. RANCOURT: Tous les documents de l'autre
côté vont être dûs le....

LE TRIBUNAL: Les deux côtés,...

M. RANCOURT: Okay.

20 **LE TRIBUNAL:** ...le 2 novembre. La motion pour
une demande de permission de porter appel, le
15 novembre...

M. RANCOURT: Et...

LE TRIBUNAL: ...à 10 heures.

25 **M. RANCOURT:** ...ce sont toutes les motions qui
sont le même jour?

LE TRIBUNAL: Oui.

M. RANCOURT: Et mes documents sont dûs le...

LE TRIBUNAL: Le....

30 **M. RANCOURT:** ...le 18.

LE TRIBUNAL: Le 18 octobre.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay.

M. RANCOURT: Maintenant, M. le Juge, il y a un autre....

LE TRIBUNAL: Ça c'est établi.

5 That's - that's done.

M. RANCOURT: Oui.

THE COURT: Next? Is there anything....

M. RANCOURT: Il y a une autre clarification que je dois amener...

10 **LE TRIBUNAL:** Oui.

M. RANCOURT: ...avant qu'on aborde le prochain sujet.

LE TRIBUNAL: Oui.

15 **M. RANCOURT:** La lettre que M. Dearden vous a donnée aujourd'hui, que j'ai juste eu la chance de regarder, est écrite d'une façon que je veux juste clarifier pour pas qu'il y ait possibilité d'induire en erreur.

20 Il y a une deuxième section de cette lettre, si vous la regardez.

LE TRIBUNAL: Questions de diffamation? Ces questions-là?

M. RANCOURT: Oui. Oui. Il y a trois points - un,...

25 **LE TRIBUNAL:** Oui.

M. RANCOURT: ...deux, trois.

LE TRIBUNAL: Non, non, on n'a pas fini encore.

M. RANCOURT: Ah.

30 **LE TRIBUNAL:** On n'a pas.... On a juste fait cet aspect-là. Peut-être qu'il y a d'autres motions. J'ai vu une motion de M. Dearden pour les refus de Mme Gervais.

Is that also a motion that you want to schedule?

MR. DEARDEN: Your Honour, I would....

THE COURT: I mean we're here.

MR. DEARDEN: I would very much want you to schedule all three motions, refusals motions in the libel action – which all of them can be heard by you. So it's really what your availability is.

THE COURT: So is this in the – is this motion for Ms. Gervais, is that in the libel action? That's the libel action.

MR. DEARDEN: Yeah. And that's number....

THE COURT: That's not the champerty.

MR. DEARDEN: It's number three, yes – under the libel action.

THE COURT: Okay.

MR. DEARDEN: Correct.

M. RANCOURT: Alors, j'étais en train...

LE TRIBUNAL: Oui.

M. RANCOURT: ...d'essayer de donner des précisions par rapport à cette question-là.

LE TRIBUNAL: Oui.

M. RANCOURT: Et ma précision est la suivante.

Si vous regardez la liste de M. Dearden, il a comme le troisième point les refus par rapport à Mireille Gervais.

LE TRIBUNAL: Oui.

M. RANCOURT: Vous voyez ça?

LE TRIBUNAL: Oui.

M. RANCOURT: J'aimerais signaler que cette motion n'est pas simplement une troisième motion; c'est une motion de refus sur la motion de refus qui est la mienne. C'est une motion de refus sur une

motion de refus. Ce n'est pas une motion directement dans le *libel action* mais c'est une motion de refus sur une motion de refus. Parce que dans la motion de refus que – que j'ai mise...

5 **MR. DEARDEN:** No.

M. RANCOURT: ...de l'abord, j'ai mis un affidavit de Mme Mireille Gervais. Et cet affidavit, M. Dearden l'a examiné – *cross-examined*.

LE TRIBUNAL: Oui.

10 **M. RANCOURT:** Et maintenant il y a une motion de refus par rapport à cette examination-là, qui était un affidavit dans une motion de refus.

LE TRIBUNAL: Ça c'est....

15 So if I have understood, he's saying that this motion was in the champerty action, is it? Was it...

MR. DEARDEN: No.

LE TRIBUNAL: ...an affidavit...

M. RANCOURT: Non. C'est....

THE COURT: ...filed in the champerty?

20 **MR. DEARDEN:** No.

M. RANCOURT: Non.

THE COURT: Why would he file an affidavit in the...

MR. DEARDEN: No. Here's....

25 **THE COURT:** ...libel action?

MR. DEARDEN: Your Honour, we hold examinations for discovery...

THE COURT: Right.

MR. DEARDEN: ...of both parties.

30 **THE COURT:** Right.

MR. DEARDEN: Okay? And that's number one and two.

THE COURT: Right.

MR. DEARDEN: There's refusals in my examination of Mr. Rancourt and there's refusals in his examination of Prof. St. Lewis. And as part of his refusals motion regarding the examination for discovery of Prof. St. Lewis, he has filed an affidavit of Mireille Gervais, which my position – and I put it on the record at the time of the cross-examination – it's completely inadmissible on the refusals motion, but, of course, how do I know the Court is going to agree with me? So I went ahead with the cross-examination.

And that cross-examination, I would guess about 95% of it was objections from Mr. Rancourt. So I might have gotten, like, five minutes of answers from Ms. Gervais. So I have filed that refusals motion which you have in front of you regarding that cross-examination.

So there's three refusals motions in play in the libel action.

THE COURT: So why don't we put them all on one day?

MR. DEARDEN: Sure.

THE COURT: Can we put them all on one day?

MR. DEARDEN: There's a lot of...

THE COURT: Deal with them all?

MR. DEARDEN: ...refusals, but....

THE COURT: No. But, I mean, there seems to be a concept. I just read your refusals – or Ms. Gervais' – your refusals – or your questions – they seem to be, in principle, whether she should answer any questions.

MR. DEARDEN: He....

THE COURT: Appears to be the general trend.
So....

MR. DEARDEN: He only let her answer questions which he felt were helpful to his case, in my respectful submission. It was the largest abuse of a cross – interference with a cross-examination...

M. RANCOURT: Objection.

MR. DEARDEN: ...that I've ever experienced in my life. And I've got it in the motion, Your Honour. I'm not saying things out of school here or criticizing. I am point-blank saying that was one of the most abusive interferences of a cross-examination I've ever experienced. He wouldn't let her answer anything unless he thought it helped his case.

M. RANCOURT: M. le Juge, est-ce que c'est nécessaire d'entendre ces arguments à ce moment-ci, quand on essaie de régler des dates? Moi, je m'objecte à ce genre de caractérisation.

LE TRIBUNAL: Okay. Ça c'est des – peut-être que M. Dearden objecte à certains carac'.. – donc ça c'est.... Des questions – est-ce qu'on peut mettre les trois sur une date?

M. RANCOURT: Ahh....

LE TRIBUNAL: Parce que les trois affaires, c'est une question de est-ce qu'elle devrait répondre à des questions ou non selon....

M. RANCOURT: Non. Je pense que, en termes de l'ampleur de ces...

LE TRIBUNAL: Oui.

M. RANCOURT: ...motions-là, parce que c'est des dizaines et peut-être des centaines de questions de refus par rapport au découvert dans l'action.

Normalement avec – normalement, je pense que un jour et un jour, ce serait plus judicieux parce que c'est sûr...

LE TRIBUNAL: Oui.

5 **M. RANCOURT:** ...qu'on ne pourra pas finir....

LE TRIBUNAL: Moi, je vas fixer – on va fixer un jour. Pis j'ai l'intention de tout vous entendre dans cette journée-là. Si c'est pas possible, pis le temps s'écoule ou on dépasse nos temps limits, à ce moment-là, on va l'ajourner à un autre jour. Mais c'est mon intention de tout régler ces choses-là dans un jour.

10 It would be my intention to try to deal with everything in a day. So we'll set it. If we can't do it, we'll set another date.

15 **M. RANCOURT:** M. le Juge,

LE TRIBUNAL: Madame....

M. RANCOURT: il y a un problème technique parce que la motion trois est une motion qui doit être décidée avant qu'on puisse...

20 **LE TRIBUNAL:** Non.

M. RANCOURT: ...continuer...

LE TRIBUNAL: Non, non, non.

M. RANCOURT: ...avec ma refus...

25 **THE COURT:** Well....

M. RANCOURT: ... – avec mon refus – ...

THE COURT: Well....

MR. DEARDEN: No, it doesn't.

M. RANCOURT: ...parce que c'est une motion dans une motion...

30 **MR. DEARDEN:** No, it doesn't.

M. RANCOURT: ...de refus.

LE TRIBUNAL: Non.

M. RANCOURT: C'est une motion dans une motion de refus.

THE COURT: But we could deal with that as number one at the start of the day. Is that a problem?

MR. DEARDEN: No, it isn't, Your Honour.

THE COURT: Okay.

MR. DEARDEN: And it's a....

THE COURT: Let's deal with that as number one instead of number three.

Ça va être numéro un en place de numéro trois.

M. RANCOURT: Mais elle va – cette motion va donner lieu à – peut-être, possiblement – une ré-examination. Et tout ça doit être réglé avant de faire les autres motions parce que c'est une motion...

LE TRIBUNAL: Non.

M. RANCOURT: ...dans une motion.

LE TRIBUNAL: Non, non. Non, non, non, non, non, non. *No. We're going to move this along.*

M. RANCOURT: C'est.... C'est....

LE TRIBUNAL: J'ai pas l'intention de tarder cette affaire-là plus que ça. On va essayer de tout faire. Vous aurez votre chance de faire vos représentations sur chacune des motions. Si on peut pas les faire dans une journée, bon, il y aura une autre journée.

M. RANCOURT: M. le Juge....

LE TRIBUNAL: Mais on va essayer de le faire. On va – on va procéder avec – numéro trois va être

numéro un; un, ça va être numéro deux; et deux, ça va être numéro trois.

M. RANCOURT: Okay. Je veux juste dire sur le procès-verbal que je m'objecte, parce que du point de vue purement administration de la justice,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...je crois qu'une motion qui est le trois doit être déterminée avant qu'on puisse procéder...

LE TRIBUNAL: Non.

M. RANCOURT: ...avec l'autre motion.

LE TRIBUNAL: Non, non, non, non, non. Pis – non, non. Pis là, vous aurez la chance de porter appel de chacune de ces motions. Pis on finira en deux mille – 2014. Selon.... Je sais pas si – si votre objectif.... Mais je suis pas d'accord. On va procéder avec ces refus. Il faut que ça soit efficace; faut que ça soit sans délai pour vous, pour les parties. Si le système est retardé, pis les dépens montent, c'est pas une bonne chose pour personne.

M. RANCOURT: M. le Juge....

THE COURT: So I am intending to set a date....

MR. DEARDEN: Your Honour, can I just make a suggestion on the order?

THE COURT: Yeah.

MR. DEARDEN: The Gervais refusals motion relates to the defendant's refusals motion regarding the examination for Prof. St. Lewis. So probably you want the defendant's refusals motion to be number two. And then the plaintiff's refusals motion...

THE COURT: Number three?

MR. DEARDEN: ...number three.

THE COURT: Okay.

MR. DEARDEN: And also, for the record, because I never know what Mr. Rancourt is going to make of transcripts and what he's going to think of, I have to put on the record, Your Honour, that the Mireille Gervais cross-examination refusals motion does not have to be dealt with first and before anything else is dealt with, because he's put that affidavit in for a very discrete issue and it won't effect 99% of the...

THE COURT: The other....

MR. DEARDEN: ...refusals that are in play.

THE COURT: The other items. The other items. The stuff at issue.

M. RANCOURT: Ça c'est un argument...

LE TRIBUNAL: Oui.

M. RANCOURT: ...qu'on est en train de présenter. On est en train d'argumenter la motion à ce moment. Je n'accepte pas, évidemment, cette...

LE TRIBUNAL: Mais selon vous....

M. RANCOURT: ...façon de procéder.

LE TRIBUNAL: Selon vous, c'est nécessaire de procéder avec la question des refus de Mme Gervais en premier.

M. RANCOURT: Bien sûr.

LE TRIBUNAL: Okay. Donc on va aller avec ça en premier. Deux,...

M. RANCOURT: Maintenant....

LE TRIBUNAL: ...ça va être *the "Defendant's Refusals Motion."* Pis trois,...

M. RANCOURT: Selon moi,...

LE TRIBUNAL: ...ça va être...

M. RANCOURT: ...M. le Juge,...

LE TRIBUNAL: ..."*Plaintiff's Refusals*."

M. RANCOURT: ...juste pour être clair, il faut déterminer la question des refus...

LE TRIBUNAL: Okay.

M. RANCOURT: ...de Mme Gervais...

LE TRIBUNAL: Okay.

M. RANCOURT: ...avant de pouvoir procéder. Ça c'est ma position.

LE TRIBUNAL: Je comprends.

M. RANCOURT: D'accord.

Maintenant, M. le Juge, il y a un problème parce que....

LE TRIBUNAL: Non, non. Mais avant qu'on aille là, est-ce qu'on – can we fix a date for these?

M. RANCOURT: Justement, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: C'est par rapport à la date que je veux parler.

LE TRIBUNAL: Oui.

M. RANCOURT: Mme Gervais est maintenant représentée. Son avocat...

LE TRIBUNAL: Oui.

M. RANCOURT: ...a eu des communications avec M. Dearden.

LE TRIBUNAL: Oui.

M. RANCOURT: Ils ont échangé hier soir et ce matin sept courriels et je dois dire que ces courriels démontrent une non-coopération de M. Dearden totale et – parce que le – le maître qui veut représenter Mme Gervais, si j'ai bien compris

d'après les courriels, veut être présent à la motion des refus.

LE TRIBUNAL: Okay.

MR. DEARDEN: Your Honour, you're not getting the full story once again.

Last night I received an e-mail out of the blue from a Mr. Hameed, I think I'd pronounce his name, and he tells me he's acting for Ms. Gervais. And, to make a long story short, I'm saying, "You don't have any standing to act for a witness that Mr. Rancourt called and Mr. Rancourt objected to."

And Ms. Gervais is a lawyer, by the way. She's a lawyer.

During that cross-examination, she listened to everything he said in terms of objections. And I get, out of the blue last night – again for delay – that he's representing this Ms. Gervais and, "Give me...". He asked for the "pleadings," whatever that means because there's a Motion Record, and he's given me dates that he was not available. And I'm quite content to – to – because I'm going to argue, for the record, that he has no standing on a refusals motion. But we may see him on the date that we set for this.

THE COURT: Okay.

MR. DEARDEN: But he has no standing.

He says he's not available October 1 to 4 and 9 to 16. So I'm quite prepared, if Your Honour is available, to argue all three refusals motions October 19th, 22nd, 23rd, 24th – but sometime this month if Your Honour is available.

THE COURT: I'm not sure I would....

5 **M. RANCOURT:** Là, M. le Juge, vous voyez le problème. Nous avons commencé par mettre des dates dans la motion champartie. J'étais écrasé par rapport à mes ressources pour cette – pour mettre ces dates-là, et maintenant il veut mettre trois autres motions avant ces dates-là. C'est ça que je parle. C'est impossible pour moi de gérer ça.

LE TRIBUNAL: Oui. Ça c'est....

10 **M. RANCOURT:** C'est impossible.

LE TRIBUNAL: C'est le litige. Faut que ça avance.

M. RANCOURT: Donc ça, c'est le premier problème.

LE TRIBUNAL: Oui. Oui.

15 **M. RANCOURT:** Et deuxièmement, j'ai ici les courriels qui ont été échangés entre M. Dearden et le maître qui représente....

LE TRIBUNAL: Non, non, mais je veux pas attendre ces affaires-là. Si Me Hameed se présente, je vas l'entendre sur la question est-ce qu'y a droit de participer – oui/non. Donc ça, ça va être la première question. Je sais pas. Je vas entendre les parties avant de faire une décision – toujours une bonne chose.

20 **M. RANCOURT:** Mais – mais il faut s'assurer qu'il puisse être là...

LE TRIBUNAL: Oui.

25 **M. RANCOURT:** ...ce jour-là.

LE TRIBUNAL: Bon. C'est ça....

M. RANCOURT: C'est ça le problème.

30 **THE COURT:** Well, let's call Mr. Lack – Labaky again.

M. RANCOURT: M. le Juge, est-ce que vous allez choisir une date sans connaître les disponibilités de Maître....

LE TRIBUNAL: *Well*, c'est ça. Il a les disponi'....
Il suggère....

M. RANCOURT: Non. C'est faux.

LE TRIBUNAL: Il suggère....

M. RANCOURT: C'est pour ça que je veux vous donner les courriels.

MR. DEARDEN: Your Honour....

M. RANCOURT: Ces courriels-là ne montrent pas que ce sont....

MR. DEARDEN: Excuse me, Mr. Rancourt.

THE COURT: Okay.

MR. DEARDEN: Excuse me, Your Honour.

M. RANCOURT: C'est une fausse....

MR. DEARDEN: I've given you the dates that Mr. Hameed told me...

THE COURT: He's available.

MR. DEARDEN: ...that he was not available,...

THE COURT: Right.

MR. DEARDEN: ...and it was October 1 to 4 and October 9 to 16. Then he's available after that. So I've....

M. RANCOURT: Non. C'est faux.

MR. DEARDEN: I've accommodated him.

M. RANCOURT: C'est dans les courriels. C'est faux.

LE TRIBUNAL: Okay.

M. RANCOURT: C'est une fausse représentation. Je m'objecte...

MR. DEARDEN: Can you....

M. RANCOURT: ...très strénueusement...

MR. DEARDEN: Well, show me. Show me where.

M. RANCOURT: Il avait dit qu'il était disponible après. Il a donné ses non-disponibilités immédiates...

LE TRIBUNAL: Oui.

M. RANCOURT: ...pour les jours qui viennent parce qu'il n'était pas au courant des choses. Tout est dans les courriels. C'est très clair. Il a pas dit, "Après ça, je suis disponible." Il a demandé à M. Dearden de – de le prendre en compte...

LE TRIBUNAL: Okay.

M. RANCOURT: ...et de le consulter.

M. Dearden a fait...

LE TRIBUNAL: Okay.

M. RANCOURT: ...une négation...

LE TRIBUNAL: Attends.

M. RANCOURT: ...de ses questions.

LE TRIBUNAL: Attends.

Are those dates available for me? – first of all. And then maybe we can contact Mr. Hameed, see if they're available to him.

MR. DEARDEN: No.

GREFFIÈRE DU TRIBUNAL: M. Labaky est sur le speaker phone.

MR. DEARDEN: Your Honour,...

THE COURT: Yeah.

MR. DEARDEN: ...Mr. Hameed has no standing...

THE COURT: He's got no standing.

MR. DEARDEN: ...whatsoever. But here's what he said in his e-mail that he sent me last night at 6:18 p.m. At the last line is:

"Presently, I can advise that I'm in tribunal hearings and in Federal Court between October 1 and 4 and have reserved dates between October 9" – reserved dates – "between October 9 and 16 for an ongoing Federal Court trial. If we could work around those dates, I would appreciate it."

So I'm working around them. I'm going after...

THE COURT: Okay.

MR. DEARDEN: ...October 16th. I'm accommodating him when I...

THE COURT: You're doing that.

MR. DEARDEN: ...respectfully submit...

M. RANCOURT: C'est une fausse...

THE COURT: ...I do not have to.

LE TRIBUNAL: Non, non.

M. RANCOURT: ...représentation, M. Le Juge. Je veux que vous preniez les courriels en question, pis que vous regardiez cela.

LE TRIBUNAL: Non, non, non, non, non.

M. RANCOURT: C'est une fausse représentation.

LE TRIBUNAL: *Let's.... Attends. Attends.*

MR. DEARDEN: What's false about it?

M. RANCOURT: C'est...

LE TRIBUNAL: Okay.

M. RANCOURT: ...hors contexte et c'était – c'est clair dans la suite des sept courriels qui sont présentés là qu'il est en train de vous dire dans les prochains jours voici, qu'on ait ça immédiatement en compte. Et après il faut parler....

LE TRIBUNAL: Okay.

MR. DEARDEN: I've read.

M. RANCOURT: Et je veux que....

MR. DEARDEN: I've read what he said on the record, Your Honour.

M. RANCOURT: Je veux que....

LE TRIBUNAL: Excusez, M. Rancourt. C'est bien. Je vous ai entendu.

Have the.... Contact Mr. Lakaby and see if I'm available. We'll get my availability and we can confirm with Mr. Hameed if that's - confirm that date is available to him.

GREFFIÈRE DU TRIBUNAL: So quelle date, Votre Honneur?

THE COURT: Well, they're proposing - I don't know - October 19th, 22nd, 23rd, 24th.

MR. DEARDEN: That's what I'm proposing, Your Honour, yes.

THE COURT: Are those dates...

MR. DEARDEN: If you're available.

THE COURT: ...available?

GREFFIÈRE DU TRIBUNAL: Votre Honneur, j'ai mis M. Labaky sur le *speaker phone*.

THE COURT: Sure.

Mr. Lakaby?

TRIAL CO-ORDINATOR: Yes, Your Honour.

MR. DEARDEN: Labaky. Labaky.

THE COURT: October. They're proposing some dates in the week of the 22nd of October. I see that I'm in Cornwall, technically, or....

TRIAL CO-ORDINATOR: The 22nd of what month, Your Honour?

THE COURT: October.

TRIAL CO-ORDINATOR: Of October. Are we vacating the November 15th date or are we keeping that one?

THE COURT: No. November 15th will be the leave to appeal.

M. RANCOURT: M. le Juge....

TRIAL CO-ORDINATOR: Okay, perfect.

THE COURT: Okay.

M. RANCOURT: Je m'objecte.

LE TRIBUNAL: Excusez. Non, non, non, non.

M. RANCOURT: C'est impossible de faire trois motions de refus la semaine où je dois préparer pour les autres trois motions qui sont juste après...

LE TRIBUNAL: Okay.

M. RANCOURT: ...alors que j'ai rien de prêt, que c'était pas prévu. C'est – c'est – c'est pas correct. Vous avez commencé par régler les dates pour les premières questions. On l'a fait de façon juste. On me demande le temps. Et maintenant vous voulez mettre...

LE TRIBUNAL: Okay.

M. RANCOURT: ...tout autant...

LE TRIBUNAL: Attends.

M. RANCOURT: ...de matériel...

LE TRIBUNAL: Attends.

M. RANCOURT: ...entre le temps.

LE TRIBUNAL: Asseyez-vous. Asseyez-vous. Asseyez-vous.

MR. DEARDEN: Your Honour, may I remind the Court that Mr. Rancourt was actually supposed to be ready to argue motions number one and two on

the list – the two examinations for discovery refusals motions were scheduled to be heard – and argued – by Justice Beaudoin on July 21st, [sic] when he decided to read his *Ottawa Citizen* article and Judge Beaudoin recused himself.

He should've been ready on July 24th [sic]. So he doesn't need.... He's had months. He doesn't need any more time. The Gervais motion is not going to take a long time.

THE COURT: The week of the 29th of October, which you're.... I don't know. We're into that.

MR. DEARDEN: I'm available the 29th, Your Honour, the 30th, 31st.

THE COURT: Can we get Mr. Labaky on the phone? Is he on the phone?

TRIAL CO-ORDINATOR: Yes, I'm here, Your Honour.

THE COURT: Okay. What about...

TRIAL CO-ORDINATOR: October....

THE COURT: ...the 29th – the week of October 29th?

TRIAL CO-ORDINATOR: Twenty-ninth, okay. We'll just see what we've got here.

October 30th, Your Honour.

THE COURT: Okay. October 30th?

TRIAL CO-ORDINATOR: Yes.

MR. DEARDEN: That's good for me, Your Honour.

THE COURT: That's good for you.

Mr. Doody?

MR. DOODY: I'm not part of that motion, Your Honour.

THE COURT: You're not part of that motion.
You're.... Okay.

So 29th, M. Rancourt?

TRIAL CO-ORDINATOR: The 30th, Your
Honour.

MR. DEARDEN: Thirtieth.

THE COURT: Sorry, the 30th – 30th.

TRIAL CO-ORDINATOR: Yes, Your Honour.

THE COURT: M. Rancourt? And why don't we
check with M. Hameed. I wonder if – Mr. Dearden,
do you want to contact him?

MR. DEARDEN: I – I am – I can do what Your
Honour tells me to do, but on the record, he has no
standing.

THE COURT: I understand that.

MR. DEARDEN: But I will have the courtesy
to....

THE COURT: Why don't we take five minutes,
call him if we can, or his office – if he's available.
We could have a neutral party – Mr. Doody.

M. RANCOURT: Non. Je – je – je veux être....

LE TRIBUNAL: Je veux la date – qu'on procède
avec ces dates. Okay?

So who would be.... Why don't we have Mr. Lakaby
call him?

MR. DEARDEN: Labaky.

THE COURT: Labaky.

MR. DEARDEN: Perfect.

THE COURT: Sorry. My apologies. I call you
Elie. I usually refer to you as Elie, so I'm not....

TRIAL CO-ORDINATOR: It's quite all right,
Your Honour.

THE COURT: I've got it the wrong twist. My apologies.

MR. DEARDEN: Mr. Labaky, it's Rick Dearden here.

TRIAL CO-ORDINATOR: Yes, Mr. Dearden.

MR. DEARDEN: You're calling Mr. Hameed, H-A-M-E-E-D.

TRIAL CO-ORDINATOR: H-A-M-E-E-D.

MR. DEARDEN: Yes.

TRIAL CO-ORDINATOR: And why am I calling him?

MR. DEARDEN: To ask him if he's available for the Gervais refusals motion October 30th...

THE COURT: At 10 a.m.

MR. DEARDEN: ...at 10 a.m. And his phone number that I have here on the e-mail he sent me last night is 232...

TRIAL CO-ORDINATOR: Two-three-two...

MR. DEARDEN: ...-2688,...

TRIAL CO-ORDINATOR: ...six-eight-eight.

MR. DEARDEN: ...extension 228.

TRIAL CO-ORDINATOR: So you gave me 232-688.

MR. DEARDEN: No, 232-2688.

TRIAL CO-ORDINATOR: Six-eight-eight, yes. Extension?

MR. DEARDEN: Two-two-eight.

TRIAL CO-ORDINATOR: Two-two-eight. All right, perfect. I'll call you right back.

MR. DEARDEN: Okay. Thank you.

THE COURT: So subject to his being available, then we'll set the date for these three motions on the 30th of October.

Vous êtes d'accord si M. Hameed est disponible?

M. RANCOURT: Oui. J'ai – j'ai déjà exprimé que j'étais pas d'accord parce que une des motions doit être décidée avant – avant une des autres.

LE TRIBUNAL: Oui. Mais à part de ses....

M. RANCOURT: J'ai déjà...

LE TRIBUNAL: Oui.

M. RANCOURT: ...exprimé ça.

LE TRIBUNAL: Oui.

M. RANCOURT: Et je suis – je suis disponible ce jour-là...

LE TRIBUNAL: Okay.

M. RANCOURT: ...si on me l'impose.

LE TRIBUNAL: C'est bien.

M. RANCOURT: Oui.

THE COURT: So we'll – if – subject to Mr. Hameed being available, then we'll – we'll schedule that, then, at 10 a.m. on October 30th.

Is there anything – anything else?

MR. DOODY: Your Honour, setting the date to argue the champerty motion, in my submission we could set that date now. If – if the leave to appeal is granted, then we'll have to...

THE COURT: You vacate.

MR. DOODY: ...deal with that,...

THE COURT: Right.

MR. DOODY: ...but if we set it now....

Because my difficulty is I'm engaged in a long matter out of town which is going to start – in Elliot Lake – which is going to start hearings...

THE COURT: Oh, that's right.

MR. DOODY: ...early in the New Year and will have me out of the City for months.

THE COURT: Okay.

MR. DOODY: So I'm quite anxious to see if we can have the champerty motion scheduled before Christmas.

THE COURT: So the appeal date we set for?

COURT REGISTRAR: November 15th, Your Honour.

THE COURT: November 15th.

Those things usually are fairly quick to decide, so I would expect by the end of November, you'd have – we'd have a decision one way or the other. There's either an error that's – or an important matter or there's not. And so December? sometime in December? So let's....

Vous êtes d'accord qu'on était....

M. RANCOURT: M. le Juge, j'aimerais, respectueusement, suggérer que l'exercice dans lequel on s'embarque maintenant...

LE TRIBUNAL: Oui.

M. RANCOURT: ...est probablement une perte de temps parce que dans l'histoire de ce cas, on a constamment changé les dates – pour bonnes raisons. Y a eu de façon raisonnable des appels, de nouvelles demandes, toutes sortes de choses. Je pense qu'on s'engage maintenant dans quelque chose qui va être obligé d'être changé, qui risque d'être une perte de temps, et je vois pas l'utilité de faire ça maintenant.

LE TRIBUNAL: Oui. Ben, on est ici. On va faire qu'est-ce qu'on peut. Si ça marche pas, ben tant pis.

Let's set it. We'll get....

5 Is Mister.... Oh, he's making the calls at this point,...

COURT REGISTRAR: Yes, Your Honour.

THE COURT: ...Labaky. And we'll see if there's a time in December.

10 Do you want to try him again, see if he's off the phone or if he's....

GREFFIÈRE DU TRIBUNAL: Votre Honneur, j'ai M. Labaky sur le *speaker phone*.

15 **TRIAL CO-ORDINATOR:** Okay, counsel, be advised I contacted Mr. Hameed and I went – went through to voicemail. So he's not answering. I don't know if he's in the office today.

And what would you like me – what would you like me to do from here?

20 **THE COURT:** Well, we'll stay with that date.

TRIAL CO-ORDINATOR: I'm sorry?

THE COURT: We will – we're going to fix that date, the 30th.

TRIAL CO-ORDINATOR: Okay.

25 **THE COURT:** And I don't know....

MR. DEARDEN: He can't – he can't, Your Honour, in my respectful view,...

THE COURT: Delay.

30 **MR. DEARDEN:** ...delay that date at all. He or...

THE COURT: She may have to....

MR. DEARDEN: ...somebody else makes himself available...

THE COURT: Right.

MR. DEARDEN: ...for October 30th.

THE COURT: Someone else in his office.

M. RANCOURT: C'est complètement inacceptable, cette proposition, M. le Juge.

THE COURT: Okay.

MR. DEARDEN: Was I finished?

M. RANCOURT: Un avocat....

MR. DEARDEN: Was I finished,...

M. RANCOURT: Un avocat....

MR. DEARDEN: ...Mr. Rancourt?

THE COURT: Just a second.

Un instant. Un instant. On va - on va compléter M. Dearden, pis là, je vais vous entendre.

MR. DEARDEN: Thank you, Your Honour.

As I was saying, he has no standing, Mr. Hameed, to be stopping the scheduling of the two libel refusals motions on the examinations for discovery that were supposed to be argued on July 24th. So he either makes himself available that date - because he never gave me any other dates that he wasn't available in October, so I'm assuming he will be available - or he sends somebody else from - from his firm.

THE COURT: Or retain someone else.

Okay, that's fine. It's going to be that date, subject to, you know, some argument. But I'm not ruling it out. If there's some future argument.... But that date is established.

So what about the champerty motion? We want a date for the champerty motion, Mr. Labaky. Are you there?

TRIAL CO-ORDINATOR: So, Your Honour, is that – is that a civil motion that we're setting down?

THE COURT: Yeah.

TRIAL CO-ORDINATOR: Or what are we setting down here...

THE COURT: Civil.

TRIAL CO-ORDINATOR: ...for the 30th?

THE COURT: Well, the 30th is a refu'..

TRIAL CO-ORDINATOR: Hello?

THE COURT: ...– civil motion, refusals.

TRIAL CO-ORDINATOR: Civil motion. It's a refusals motion?

THE COURT: There are three matters, three refusals motions in the libel action, although it may not matter to you.

TRIAL CO-ORDINATOR: Okay – three refusals motions...

THE COURT: Plaintiff's....

TRIAL CO-ORDINATOR: ... – motions, yes.

THE COURT: Plaintiff's....

TRIAL CO-ORDINATOR: And are you seized of it, Your Honour?

THE COURT: Plaintiff's refusals motion.

MR. DEARDEN: Yes.

THE COURT: Defendant's refusals motion. And a Plaintiff's refusals motion with regards to Mireille Gervais.

TRIAL CO-ORDINATOR: Okay. And are you.... You're seized of this matter, Your Honour?

THE COURT: Yes. I was part of the case.

TRIAL CO-ORDINATOR: You're hearing these?

THE COURT: Yes.

TRIAL CO-ORDINATOR: These motions?

THE COURT: Yes.

MR. DEARDEN: Yes.

TRIAL CO-ORDINATOR: Yeah, okay, great.

Thank you. I'll pencil that in.

Do you need anything else from me?

THE COURT: Yes. We need another date...

TRIAL CO-ORDINATOR: Sure.

THE COURT: ...in December.

When are you leaving, Mr. Doody? When are you...

MR. DOODY: Well, I was....

THE COURT: ...leaving the area, moving up north?

MR. DOODY: That remains to be seen, Your Honour, but it's likely it won't be before January,...

THE COURT: Okay.

MR. DOODY: ...but it may be in January. So I was hoping that we could get this in the week - either the week of the 10th or the week of the 17th.

TRIAL CO-ORDINATOR: Okay. Let's see what we can do here. December 10th....

MR. DOODY: Other than the 21st.

THE COURT: I'm on vacation the 17th. The week of the 10th....

TRIAL CO-ORDINATOR: We can do....

THE COURT: The week....

TRIAL CO-ORDINATOR: I would prefer to do, like, a Wednesday or a Thursday, maybe even the Friday. Actually, no, that's set.

The 12th or the 13th?

MR. DOODY: That's fine with me.

TRIAL CO-ORDINATOR: Possibly the 11th.

MR. DOODY: Fine with me, Your Honour.

THE COURT: Let's do the 13th.

TRIAL CO-ORDINATOR: Thirteenth? - done, Your Honour. And that is - that's for the champerty motion?

THE COURT: That's a champerty motion.

MR. DEARDEN: One day.

THE COURT: One day.

TRIAL CO-ORDINATOR: Thank you, Your Honour. Are you seized of this one?

THE COURT: Yes, I am.

TRIAL CO-ORDINATOR: You are?

THE COURT: Yes.

TRIAL CO-ORDINATOR: Are you - are you hearing this motion, Your Honour?

THE COURT: Yes.

MR. DEARDEN: Yes. Yes.

THE COURT: Yes.

TRIAL CO-ORDINATOR: Yes, okay.

THE COURT: I see it's during my non-sitting week, but that's fine. Let's do that.

TRIAL CO-ORDINATOR: Okay.

MR. DOODY: Thank you.

MR. DEARDEN: Thank you.

COURT REPORTER: Can I just ask which month?

THE COURT/MR. DEARDEN: December.

COURT REPORTER: Thank you.

M. RANCOURT: Est-ce que, donc, il y a une date qui a été fixée pour la....

LE TRIBUNAL: Le 13 décembre à 10 heures pour la motion champartie.

TRIAL CO-ORDINATOR: Any more dates, Your Honour?

THE COURT: No. I think that's all for now. Thank you.

TRIAL CO-ORDINATOR: Perfect, Your Honour. Let me know if you have anything else.

THE COURT: Maybe what you can do is send an e-mail to Mr. Hameed and advise him that the matter involving Ms. Gervais is set for October 30.

TRIAL CO-ORDINATOR: No problem, Your Honour – October 30, and....

THE COURT: Ten a.m.

TRIAL CO-ORDINATOR: Yes. I'll do that right away.

THE COURT: Thank you.

M. RANCOURT: Could the parties be cc'd, please?

THE COURT: Copy to the parties.

TRIAL CO-ORDINATOR: Sorry?

THE COURT: Copy to M. Rancourt and to Mr. Dearden and Mr. Doody.

TRIAL CO-ORDINATOR: Of course.

THE COURT: Okay?

TRIAL CO-ORDINATOR: No problem, Your Honour. Thank you.

THE COURT: Thank you.

TRIAL CO-ORDINATOR: Take care.

MR. DOODY: Dates for filing, Your Honour, on the champerty motion?

THE COURT: Haven't you filed everything? Is there more filing?

MR. DOODY: No, there's no - there's no.... I'm talking about factums.

THE COURT: Factums.

MR. DEARDEN: And motion records.

MR. DOODY: Factums, yeah. Yeah, and - and - and the record. Mr. Rancourt has filed a number of affidavits but they need to be put into record form so we can cite them in our facta.

THE COURT: Okay. So....

M. RANCOURT: Alors, moi, je propose...

LE TRIBUNAL: Je sais pas si....

M. RANCOURT: ...par rapport à ça...

LE TRIBUNAL: Oui?

M. RANCOURT: ...qu'on suit simplement les règles telles qu'elles sont dans les Règles de procédure; c'est-à-dire sept jours et quatre jours, tels qu'ils sont décrits dans les règles.

LE TRIBUNAL: Donc.... Donc, c'est votre motion. Donc, votre facta, ça serait - eux-autres veulent avoir un "Ref" de tout record, trial record.

M. RANCOURT: Oui. J'aurai pas de problème à...

LE TRIBUNAL: Okay.

M. RANCOURT: ...à donner tout ça...

LE TRIBUNAL: Okay.

M. RANCOURT: ...sept jours avant la motion, et je vais le faire.... La plupart - la plupart des choses, j'ai déjà déposée devant la Cour et....

LE TRIBUNAL: Okay. Donc, juste les mettre ensemble vraiment.

M. RANCOURT: Oui. C'est ça.

THE COURT: So trial record by December.... Is that sufficient? What about December the 1st for the trial record?

MR. DOODY: Thank you, Your Honour.

THE COURT: December....

MR. DOODY: December....

M. RANCOURT: C'est-à-dire que sept jours, ça serait le 6 décembre.

THE COURT: No, I understand that.

MR. DEARDEN: No.

THE COURT: But they'll be - want to reply by - what? - the 7th?

MR. DOODY: If Mr. Rancourt was to file his.... The 1st is actually a Saturday, Your Honour.

THE COURT: Okay.

MR. DOODY: So the 30th of November.

If we were then to file our facta on the 7th of December, then Your Honour would have the advantage of having those facta - all parties' facta - the weekend before the motion, and the motion will be argued on the following...

THE COURT: Thursday.

MR. DOODY: ...Thursday. So that - I think that will be fine.

THE COURT: So....

MR. DOODY: The 30th for Mr. Rancourt; the 7th for Mr. Dearden and I; and argue the motion - those are both Fridays - and argue the motion on Thursday, the 13th.

M. RANCOURT: Donc, il y a un problème purement d'administration de la justice.

LE TRIBUNAL: Oui.

M. RANCOURT: Les – il est possible que les motions pour demander appel ne seront pas décidées rapidement. Donc il est toujours possible qu'il y ait un conflit de cet ordre-là.

THE COURT: It's possible. Ça c'est.... It's possible there won't be a decision, but if there is, [sic] we'll have to set new dates.

M. RANCOURT: Et....

LE TRIBUNAL: S'il y a pas une décision...

M. RANCOURT: Oui.

LE TRIBUNAL: ...avant cette date-là, on est....

M. RANCOURT: L'autre problème, M. le Juge,..

LE TRIBUNAL: Oui.

M. RANCOURT: ...disons, par exemple, que la décision arrive la semaine du 30 novembre,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...ça me donne très peu de temps pour préparer mes documents et mes pensées, de regarder cette décision-là, parce qu'elle aura peut-être des implications en champartie.

Tout ça est écrasé dans le temps, et c'est typiquement ce que je dois subir. Maintenant je me demande si ce serait plus raisonnable d'aller un peu plus tard pour permettre ça qu'on n'ait pas besoin de refaire le tout encore.

THE COURT: Well, November 30th.... Vous parlez jusqu'au lundi qui suit? December 1st is a Saturday. Second. Third? Is December 3rd....

MR. DEARDEN: Your Honour,...

THE COURT: And....

M. RANCOURT: Oui.

THE COURT: Tenth?

5 **MR. DEARDEN:** ...if -- if I could, please. I am.... I find it quite intriguing that Mr. Rancourt has insisted a couple of times today that he only wants to give Mr. Doody and I seven days to react to what he's going to file.

10 Who knows what he's going to file? I read something, some interview he gave, that he didn't want to give the interviewer a whole head's-up of the "surprises" that he has, or words to that effect, that's...

15 **M. RANCOURT:** Objection.

MR. DEARDEN: ...to come in the champerty motion.

M. RANCOURT: Je sais bien....

20 **LE TRIBUNAL:** Non, non, pas d'objection.

MR. DEARDEN: Excuse me.

LE TRIBUNAL: Non, pas d'objection.

M. RANCOURT: C'est incroyable, M. le Juge.

MR. DEARDEN: Excuse me.

25 **M. RANCOURT:** C'est incroyable.

MR. DEARDEN: Excuse me.

M. RANCOURT: Incroyable.

30 **MR. DEARDEN:** I can show you, Your Honour, that transcript if you wanted it, but at any rate, I'm worried that he's going to have something in there that will be intended to delay when Mr. Doody and I can actually fully respond and assist the Court for argument on December 13th. So I'm respectfully insisting it's November 30th that he has to file his motion record and factum on the merits of this motion. And, as Your Honour has said repeatedly, if something comes up that we have to change these

dates, well, we might be changing those dates, but right now as we stand here, November 30th.

He filed his motion in January. It was to be argued August 29th. He's had tons of time. He wants.... It's so obvious that he wants to delay and delay and delay things here, that - that it really is - it's awful, in my respectful submission.

So I'm submitting we stick with what Your Honour has said: November 30th for his materials, December 7th for our materials, we argue December 13th.

THE COURT: We'll stick with that schedule.

Si y a quelque chose avec la demande de permission de porter appel, on pourrait s'ajuster. D'habitude il n'y en a pas des - vraiment des motifs extensifs dans ces choses-là. D'habitude, c'est vraiment.... Souvent - souvent y a.... Okay.

Often there's very little - short reasons given on leave to appeal interlocutory motions. So....

Maybe they'll be long. I don't know.

Ça c'est - ça c'est des inconnus. Donc on va avec cet horaire.

M. RANCOURT: Si on peut résumer,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...parce que j'ai peut-être pas tout compris...

LE TRIBUNAL: Oui.

M. RANCOURT: ...tous les dates.

Donc, je dois rendre mes documents le...

LE TRIBUNAL: Trente...

M. RANCOURT: ...30 novembre.

LE TRIBUNAL: ...novembre.

M. RANCOURT: Et....

LE TRIBUNAL: Factum....

M. RANCOURT: Et eux, y vont rendre leurs documents le 7 décembre.

LE TRIBUNAL: Le 7 décembre.

M. RANCOURT: Mm-mmm.

LE TRIBUNAL: Pis on va entendre la motion champartie le 13 décembre.

Okay. Anything else?

MR. DOODY: Your Honour....

Sorry. And I apologize, and I'm not going to ask Your Honour to deal with this now, because Mr. Rancourt didn't have notice of it.

But when Justice Beaudoin ruled on the refusals with which my client was concerned on the 20th of June, he then delivered his reasons for those refusals in early August, having recused himself from further deliberations in matters involving this lawsuit on the 24th of July.

Justice Beaudoin's reasons did not deal with the issue of costs of that motion. My client is seeking - will be seeking costs, and I'm seeking directions from the Court as to the - the procedure which I ought to follow. In my submission, Your Honour ought to hear those submissions with respect to costs of that motion before Justice Beaudoin, but, as I say, I didn't give Mr. Rancourt notice of this; and perhaps I could write you a letter and we could deal with this in writing.

THE COURT: Well, I'll be thinking 10 days - *10 jours, 10 jours, 7 jours*. You know, that's my standard.

M. RANCOURT: M. le Juge, avant de prendre la décision,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...j'apprécierais que vous entendiez les arguments de M. Doody qu'il propose de vous donner et que je puisse répondre à ses arguments par rapport à qu'est-ce qui doit être fait et ensuite, on peut peut-être prendre la décision.

LE TRIBUNAL: Ben, on pourrait faire ça par écrit.

So if Mr. Doody wants to write me with reasons why I should hear the costs motion and that suggesting a time limit, I'm suggesting if I'm to hear them - I'll determine that first of all - ...

M. RANCOURT: Oui.

THE COURT: ...you'll have a right to respond.

M. RANCOURT: Oui.

LE TRIBUNAL: Et puis - a right of seven-day reply. And I'll decide: a) whether I'll hear it, if I'm.... I don't know if Beaudoin can do it at this point. I can't see how he can.

MR. DOODY: No, I don't think he can, Your Honour.

THE COURT: Because he's already said he can no longer....

M. RANCOURT: Mais je - je - je tiens à signaler, M. le Juge, voilà un autre exemple...

LE TRIBUNAL: Oui.

M. RANCOURT: ...des tâches qui sont mis devant moi dans la même période de temps. Vous voyez ce qui se passe: on commence par régler une date de quelque chose très important, trois motions qui doivent être entendues, des factums très complexes à produire, etc., et ensuite on m'impose

d'autres motions et des arguments par rapport aux coûts, et tout ça doit être entendu dans des délais dans la même période de temps.

Je suis auto-représenté. Je trouve ça très difficile, si pas impossible. Et c'est typique de ce que l'on fait. On – on m'amène ça à la dernière minute. On me – on me met ça en plus.

Alors moi, je proposerais, pour une question de justice, que les délais soient après – plus tard – qu'il y ait des délais un peu plus longs que la normale; par exemple 15 jours, 15 jours et 7 jours, quelque chose...

LE TRIBUNAL: Okay.

M. RANCOURT: ...comme ça.

LE TRIBUNAL: Quinze jours, 15 jours, 7 jours – I'll probably go with that.

Any objection to that?

MR. DOODY: I'm sorry, Your Honour, I was....

THE COURT: He said – suggested – I usually use 10, 10 and 7 – but it could be 15, 15 and 7. Is that what you said? Or 10? Fifteen, 15, 10?

MR. DOODY: I don't care, Your Honour.

M. RANCOURT: Moi, j'ai proposé 15, 15 et 7.

LE TRIBUNAL: Quinze,...

MR. DOODY: It's no prob'....

LE TRIBUNAL: ...15 et 7.

MR. DOODY: No problem.

THE COURT: So 15, 15 and 7.

MR. DOODY: And just – just to be clear, Your Honour: am I to write you and ask whether you – you – ...

THE COURT: We'll deal with both.

MR. DOODY: ...make submissions on - or deal with everything at once?

THE COURT: Both. Both.

MR. DOODY: Perfect.

THE COURT: Okay.

MR. DOODY: Thank you, Your Honour.

MR. DEARDEN: 'Cause if you....

LE TRIBUNAL: Les deux. On va parler des deux questions. On va pas les étendre.

MR. DEARDEN: 'Cause, Your Honour....

LE TRIBUNAL: Quinze, 15, 15 et 15, 15, 7; 15, 15, 7. Ça va faire....

MR. DEARDEN: You have our costs outline already.

THE COURT: I have yours, yes, already.

MR. DEARDEN: And he's responded to costs already.

THE COURT: I don't know if he's responded...

MR. DEARDEN: And I've got 'til Monday to respond.

THE COURT: ...to costs.

Have you?

M. RANCOURT: Oui, j'ai - j'ai un livre que - c'est donné. Je....

LE TRIBUNAL: Je sais pas si j'ai vu ça.

MR. DEARDEN: He's quite - he's quite able to do it, Your Honour. He's quite able to do it. He's unemployed and this is all he seems to be concentrating on.

THE COURT: I don't know if I've got....

Je sais pas si....

M. RANCOURT: Ce genre de commentaire est pas nécessaire. C'est incroyable.

MR. DEARDEN: No,...

M. RANCOURT: Alors....

MR. DEARDEN: ...it is necessary...

M. RANCOURT: Sa raison de....

MR. DEARDEN: ...because you can't leave the record empty.

LE TRIBUNAL: Je ne sais pas si j'ai eu....

M. RANCOURT: Je l'ai donné...

LE TRIBUNAL: Vérifiez avec....

M. RANCOURT: ...à M. Labaky - au bureau de M. Labaky. Il l'a intenté à la date que c'était eu.

LE TRIBUNAL: Okay.

M. RANCOURT: Et on a dit....

LE TRIBUNAL: Je sais pas si je l'ai eu. Parce qu'y a toute une boîte - deux ou trois boîtes d'affaires.

I don't know if I've seen it.

M. RANCOURT: Ça.... Ça....

THE COURT: I've seen Mr. Dearden's. I have not seen your response. But it may be in the process of - peut-être c'est en route à mon bureau. Je sais pas si....

M. RANCOURT: Ça devrait déjà être sur votre bureau parce qu'on m'a dit, "Je lui amène tout de suite alors." C'est ce qu'on m'a dit.

LE TRIBUNAL: Okay. Je l'ai pas vu. Donc....

M. RANCOURT: Alors je vous....

LE TRIBUNAL: Ah, oui, oui, oui, oui - oui, je l'ai vu.

I have seen it. Yes, I have seen it.

M. RANCOURT: Okay.

THE COURT: I have not read it completely but I have...

M. RANCOURT: Oui.

THE COURT: ...looked....

Oui, ça c'est vrai.

M. RANCOURT: Oui.

THE COURT: I have seen so many things. I've been looking at....

Okay. *Donc*, are we – are we finished?

MR. DOODY: Yes.

MR. DEARDEN: Yes, Your Honour. Thank you.

COURT SERVICES OFFICER: All rise.

LA SÉANCE EST LEVÉE (11h40)

Formule 2**CERTIFICAT DE TRANSCRIPTION***Loi sur la preuve, paragraphe 5(2)*Je, **la soussignée,****Leona M. Scott****certifie que**

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(Nom de la matière)

(Nom de la cour)

entendue à

161, rue Elgin à Ottawa, jeudi, le 27 septembre 2012

(adresse de la cour)

prise de l'enregistrement

0411-37-20120927

, qui a été certifié en Formule 1.

Le 9 octobre 2012

(Date)


(Signature de la personne autorisée)

SUPERIOR COURT OF JUSTICE

JOANNE ST. LEWIS

V.

DENIS RANCOURT

P R O C E E D I N G S

HEARD BEFORE THE HONOURABLE MR. JUSTICE SMITH
on Tuesday, October 30, 2012 at OTTAWA, Ontario

APPEARANCES:

Dearden, Mr. R.

Counsel for the Plaintiff

Rancourt, Mr. D.

Self Represented

Hameed, Mr. Y.

For Ms. Gervais

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SUPERIOR COURT OF JUSTICE

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TUESDAY, OCTOBER 30, 2012

THE COURT: Good morning.

MR. DEARDEN: First order of business, Your Honour,
is to swear in the interpreters.

THE COURT: Okay.

DANIEL RENAUD: INTERPRETER AFFIRMED (French/English)

PASCAL RENAUD: INTERPRETER AFFIRMED (French/English)

LE TRIBUNAL: La première question c'est est-ce que
monsieur Hameed peut être - peut se présenter ou
représenter de quelque manière Maître Gervais, ça
c'est la première question. Peut-être avant ça on
devrait établir les temps limites - si tu as une
suggestion - par monsieur Dearden, pour nos - nos
plaidoiries.

So we should set some time limits probably first
order of business. Mr. Dearden has set out some
time limits. Il a propose des - I don't know if you
prefer to proceed in English or French. C'est à
votre choix.

MR. HAMEED: I think I'll be making my - good
morning, Your Honour - my submissions in English
this morning.

THE COURT: Yes.

SUBMISSIONS BY MR. HAMEED:

5 And with respect to my friend's proposal on time limits, I think it's reasonable that, I think he proposed 15 minutes for the parties on the intervention motion. I think I should be able to go through my submissions in approximately 15 to 20. That would include my reply as well.

THE COURT: Let's make it 20 then.

MR. HAMEED: Certainly. Thank you, Your Honour.

10 THE COURT: Fifteen, five to reply and 15 for Mr. Dearden?

MR. HAMEED: That should be sufficient and Mr. Dearden also had other suggestions with respect to the subsequent motions. I could only speak to - depending on what your ruling would be on the intervention, it may be a longer motion. I think 15 the proposal was an hour for the Gervais refusals I think it would be longer than that, in the range of approximately an hour and a half for that but I can't really speak to more than that in terms of the proposed timings. 20

LE TRIBUNAL: Okay. Monsieur Rancourt...

M. RANCOURT: Oui.

LE TRIBUNAL: Je ne sais pas - vos commentaires?

25 REPRÉSENTATIONS PAR M. RANCOURT:

Oui, Monsieur le Juge, pour ce qui est du début et les motions qui sont relativement simples, les premières motions, je suis en gros d'accord avec mes collègues.

30 LE TRIBUNAL: Okay.

M. RANCOURT: Mais pour ce qui est des deux grosses motions de refus qui impliquent plus de 1,000

questions presque - plus de 2,000 questions dans les découvertes des refus, j'avais déjà dit au Juge Beaudoin qu'à mon sens ce n'était pas raisonnable de faire ces deux motions-là dans la même journée. Et sa réponse devant la Cour avait été,

« On fait ce qu'on peut et puis s'il faut mettre plus de temps, on met plus de temps. »

Donc, ce qui me concerne moi et monsieur Dearden est au courant de ça, ce qui me concerne moi c'est d'être contraint à un point que je ne peux même pas présenter mes arguments. Je veux avoir la chance de bien présenter mes arguments. Je vais le faire d'une façon efficace et correcte, et je suis ouvert aux suggestions, si vous croyez que certains points ne sont pas pertinents, mais je veux avoir le temps de faire mes arguments. Donc à mon sort j'imagine mal - dans l'expérience de cette cause, que nous avons fait une grosse motion de refus justement dans le passé, on avait prévu une première journée, c'est allé très rapidement et de façon très efficace, mais ça nous a permis que de faire la moitié de cette motion. Et je pense qu'il faut permettre - il y a des centaines de questions à considérer, il faut permettre une considération correcte de chaque point important; ce qu'on appelle en anglais « an issue ». Alors voila ma soumission, Monsieur le Juge, je n'accepte pas ce - cette contrainte très limitée que monsieur Dearden a suggéré par rapport aux deux grosses motions. Je ne pense pas que c'est raisonnable.

LE TRIBUNAL: Les deux grosses motions, selon vous, c'est - donc la motion de madame Gervais, est-ce que c'est une grosse motion ou c'est les autres qui sont des grosses motions?

5 M. RANCOURT: Non, non, non, Monsieur le Juge.
Laissez-moi expliquer.

LE TRIBUNAL: Oui.

M. RANCOURT: Il y a quatre motions aujourd'hui.

LE TRIBUNAL: Oui. Quatre ou trois?

10 M. RANCOURT: La première....

LE TRIBUNAL: Il y a trois - il y en a trois vraiment. Il y a....

M. RANCOURT: La première motion c'est une motion pour avoir le droit d'intervenir.

15 LE TRIBUNAL: Oui.

M. RANCOURT: Que madame Gervais met de l'avant.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: Cette motion est pour avoir le droit d'intervenir dans une motion de refus.

20 LE TRIBUNAL: Oui.

M. RANCOURT: Qui sont les refus de madame Gervais.

LE TRIBUNAL: Oui.

M. RANCOURT: Et ces refus-là sont par rapport à un affidavit qu'elle a soumis - que j'ai soumis...

25 LE TRIBUNAL: Oui.

M. RANCOURT: ...qu'elle a soumis dans...

LE TRIBUNAL: Oui, oui.

M. RANCOURT: ...ma motion et cette motion-là était elle aussi une motion...

30 LE TRIBUNAL: Je vais juste....

M. RANCOURT: ...de refus.

LE TRIBUNAL: Oui, oui, je comprends. Je comprends.
Je comprends. J'ai....

M. RANCOURT: Alors cette motion de refus...

LE TRIBUNAL: Oui.

M. RANCOURT: ...c'est une motion de refus par
rapport aux découvertes dans la cause principale.
Il y a....

LE TRIBUNAL: La motion de découverte ou la motion
des - pour champartie?

M. RANCOURT: Non, aujourd'hui on ne traite pas du
tout de champartie.

LE TRIBUNAL: Non, mais madame Gervais c'était une
motion dans - soumis dans votre motion de champartie
ou de....

M. RANCOURT: Pas du tout. Pas du tout, Monsieur le
Juge.

LE TRIBUNAL: Découverte - d'examens au préalable.

M. RANCOURT: Oui, les examens au préalable
uniquement. Aujourd'hui on ne traite pas du tout de
champartie, c'est pour ça que monsieur Doody est
absent.

LE TRIBUNAL: Okay.

M. RANCOURT: Tout - tout ce que l'on fait
aujourd'hui ce sont des motions....

LE TRIBUNAL: De toute façon c'est pour les temps
limites.

M. RANCOURT: Oui.

LE TRIBUNAL: Les temps limites pour les refus de
madame Gervais, une heure et demi proposée par
monsieur - Maître Hameed. Vous êtes d'accord,
j'imagine? C'est pas vrai....

M. RANCOURT: C'est-à-dire après la décision pour intervenir...

LE TRIBUNAL: Oui.

M. RANCOURT: ...vous parlez de la prochaine motion?

LE TRIBUNAL: Oui.

M. RANCOURT: Je ne sais pas comment ça va aller.

J'ai pas beaucoup d'expérience, mais ça dépend aussi quelle est votre décision sur la première motion.

LE TRIBUNAL: Oui.

M. RANCOURT: Donc....

LE TRIBUNAL: Mettons on va dire une heure et demie pour cette motion. Madame - motion de madame Gervais.

M. RANCOURT: Mais c'est juste....

LE TRIBUNAL: C'est ça - son procureur qui a donné...

M. RANCOURT: Oui.

LE TRIBUNAL: ...cet estimé.

M. RANCOURT: On verra. On verra.

LE TRIBUNAL: Bien, okay. Mais mettons les temps limites - j'ai l'intention de vous tenir à vos - aux temps limites. Puis j'utilise des temps limites...

M. RANCOURT: Si....

LE TRIBUNAL: ...pour que ça avance - pour que ça avance, pour qu'on passe pas la journée longue - puis on accomplit rien. On accomplit juste un minime. Je veux accomplir - Cour d'Appel établis des limites de deux heures, une heure et demie, puis on - il faut être précis.

M. RANCOURT: Je propose la chose suivante, Monsieur le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Si vos temps limites sont des temps limites absolu, je préfère qu'on mette une....

LE TRIBUNAL: C'est des temps limites qu'on va demander à monsieur le registraire - greffier, de prendre soins de ça pour que maître Dearden et vous vous suivez les limites, les mêmes.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça sera pas plus pour vous, plus que - pour monsieur Dearden ou vice versa, donc....

M. RANCOURT: Oui.

LE TRIBUNAL: Selon les mêmes - les mêmes limites pour les deux parties.

M. RANCOURT: Donc, Monsieur le Juge, si je peux....

LE TRIBUNAL: Oui.

M. RANCOURT: Si vous pouvez me permettre de finir ma phrase. Si vos temps limites sont des temps limites rigide, absolu....

LE TRIBUNAL: Bon, rigide, bon c'est jamais rigide, rigide, mais je vous avise que j'ai l'intention de les suivre.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay.

M. RANCOURT: Dans ce cas-là j'aime mieux qu'on attribue une petite demi-heure de plus pour cette deuxième motion, puis si on fini avant, tant mieux.

LE TRIBUNAL: Okay. Mais je - pour les motions qui suivent - mettons deux heures, une heure et demie, une demie heure, ça va être quatre heures, je ne sais pas si on va avoir le temps pour la - la troisième motion - I don't know.

M. RANCOURT: Moi je sais, Monsieur le Juge...

LE TRIBUNAL: Oui.

5 M. RANCOURT: ...je sais - j'ose dire je sais qu'on aura pas le temps, dans mon expérience, c'est - ça me paraît pas raisonnable. Je l'ai dit au Juge Beaudoin, et sa réponse était « On fait ce qu'on peut ».

LE TRIBUNAL: Bon bien c'est un peu plus qu'on fait ce qu'on peut, on va faire ce que vous pouvez faire dans les temps raisonnables.

10 M. RANCOURT: Oui.

LE TRIBUNAL: Okay. Okay. Merci. Mr. Dearden?

MR. DEARDEN: Thank you, Your Honour.

15 SUBMISSIONS BY MR. DEARDEN:

Your Honour I don't recollect Justice Beaudoin saying what you've been informed he said in terms of just letting you know, the days go by.

20 THE COURT: No, I have no intention of just letting things ride in the air.

MR. DEARDEN: Then can I put on the Record Your Honour that there are your indication to Mr. Rancourt that there are time limits imposed on counsel when making arguments, it's not just - it's everybody.

25 THE COURT: It's not new. No, it's the standard thing that I do and other judges do and it's a good thing.

MR. DEARDEN: All the time.

30 THE COURT: Yes.

MR. DEARDEN: Because we have to.

THE COURT: Right.

MR. DEARDEN: You can't just, as Mr. Rancourt thinks eat up Court resources and just say,

5 "Let's have another day for the examinations for discovery of Joanne St. Lewis on those refusals."

Judge Beaudoin sat down, one day the two discovery refusals motion. And Mr. Rancourt at that time, to the best of my recollection, was again saying
10 there's not enough time and he was told,

"Those refusals motions are going to be heard on July 24th."

And then of course you know what happened on July
15 24th and they were sat down until October 30th. So Your Honour can I suggest this, we have time limits set for whether Mr. Hameed gets stand ins...

THE COURT: Correct.

MR. DEARDEN: ...to intervene.

20 THE COURT: Correct.

MR. DEARDEN: And then in terms of the actual refusals motion I still stay that Ms. Gervais' refusals, that it can be done by both sides in half an hour.

25 THE COURT: I don't see that one as a lengthy one, she either has to answer some questions or if she doesn't basically.

MR. DEARDEN: The key issue for you to decide...

THE COURT: Right.

30 MR. DEARDEN: ...Your Honour is can somebody that's being cross-examined on an affidavit be tested on

the reliability, the independence and credibility of that affidavit of evidence. And if you decide that than you're going to order, in my respectful submission, that she has to answer all the questions that I ask that Mr. Rancourt objected to. So those are....

THE COURT: So let's put Ms. Gervais' time limit at one hour. So we have half an hour essentially, 35 minutes, we have one hour for Ms. Gervais, you've proposed two hours for the questions on Joanne St. Lewis, this is Mr. Rancourt's motion which would be the next one. La prochaine - so two hours sounds like a reasonable estimate, that's an hour each?

M. RANCOURT: Monsieur le Juge...

LE TRIBUNAL: Oui.

M. RANCOURT: ...j'ai déjà exprimé mon opinion que...

LE TRIBUNAL: Oui.

M. RANCOURT: ...dans mon expérience, étant donné l'ampleur de la motion, ça ne sera pas suffisant.

THE COURT: Okay well let's do one hour each and 15 minutes in reply. Donc ça veut dire une heure chaque, donc on vient de - une heure et demie, deux heures et - puis après ça on verra - on verra pour la dernière. So Mr. Dearden, I don't know if we'll have time or not. These are - so Mr. Registrar, I want you to keep track of the time, advise counsel five minutes before the end of their time on these motions. I indicated that once we've discussed it I do intend to follow these time limits. They're not - if there's someone for some special reason that needs a little extra time well okay, it may be granted. I'm not saying I won't extend a few

minutes but we would attempt to follow these time limits.

MR. DEARDEN: And Your Honour if I could just make a point. You know, I have prepared to argue both of these examinations for discovery refusals motion back in July. We now fast forward to October 30th. It takes a lot of time, Your Honour to - you're doing it over is what you're doing. So I'm hoping - your preparation, the preparation, doing it all over. And there's a lot of material.

THE COURT: I agree and I've reviewed this. I've reviewed your charts and it's a lot of material for counsel to prepare, it's a lot of material for me to review. I'm fully aware, I'm quite aware of that. And we will do what we can. If we finish early, which would be great, then if we do finish early then we'll get this last one done. And we may still.

MR. DEARDEN: That's my hope, Your Honour...

THE COURT: Okay.

MR. DEARDEN: ...is that we deal with all of the Motions today so that we're not preparing again.

THE COURT: It would be good for all the parties to get the matters resolved to get your litigation moving forward with less time and expense as possible. Okay. So Mr. Hameed, you're up.

SUBMISSIONS BY MR. HAMEED:

Thank you. Your Honour and if may just - before I get into the substance of our intervention motion, you've read the materials and our materials consist of just the factum and casebook. I've got a bound

5 copy there I just handed to Mr. Registrar, he's
handing it up to you. I appreciate that. So one
thing I just wanted to draw to the Court's attention
and obviously the complexity of these matters
precedes me in terms of various motions being
stacked on the day. In terms of the remedy sought,
I just draw your attention to page 10 of our factum.
You would have read this paragraph 45(c) that we
would like to have the opportunity to actually file
10 submissions and I say that we in terms of Emily
Gervais as the intervener on the substance of
refusals. What I've done, following your direction,
is to prepare a factum specifically on the issue of
leave to intervene and that's part of the ambit of
what we're seeking by way of remedy. I just wanted
15 to draw that to the Court's attention that may
affect timelines depending on what you see as the
appropriateness of intervention or not.

THE COURT: Okay.

20 MR. HAMEED: So Your Honour, in a nutshell, this is a
motion for intervention. You're well aware of the
test under Rule 13.01. This is set out in our
factum on pages five through seven and really we
start from the basic threshold under Rule 13.01 is
whether a person should be added as a party, there
25 are several subsections....

THE COURT: You're not seeking to be added as a
party?

MR. HAMEED: As an intervener.

30 THE COURT: But you don't want to be added as a
party?

MR. HAMEED: No.

THE COURT: Ms. Gervais doesn't want into this lawsuit...

MR. HAMEED: Yes, that's correct.

THE COURT: ...I don't imagine?

MR. HAMEED: No. So in respect of leave to intervene, Your Honour, there are three subsections there, A through C and we know it's a disjunctive test so we're not looking to fulfill all of those criteria but one will suffice. And Ms. Gervais' - the applicant's submission is that we clearly meet at least two of those and I go through in the factum A and B.

THE COURT: Well, I guess, just so we can focus, my question is do you really want intervenor status or do you seek to have - to be the legal representative to have - provide legal advice to Ms. Gervais while she's being examined? Is it just simply to give legal representation to a witness because she is a witness, she filed an affidavit.

MR. HAMEED: Yes.

THE COURT: So she's a witness in the proceedings.

MR. HAMEED: Yes.

THE COURT: So is that not the test? Should a witness have a right to have counsel? Generally that's not the case, as you know.

MR. HAMEED: I understand. I understand.

THE COURT: So is that what you're asking?

Intervenor status is another - another matter where you have another interest to represent usually granted to interest groups such as human rights groups or parties or associations who have a special interest or may be affected by ruling. I don't see

that here but you can convince me. So that's my first question.

MR. HAMEED: Certainly. I think that Your Honour again, within the discretion of the Court, we would be seeking both but for the purpose of the motion to be argued, I think in order to get to that stage there are certain principles that the Court needs to consider and I agree with the Court's position with what the normal course of events is with respect to representation of the witness or not but my first submission with respect to intervention is that we should be added as an intervener. If you find it's appropriate, we would intervene on the motion as part of that but not necessarily determinative of the intervention issue is the related issue of providing legal advice to a witness. So I agree with you, they're not the same question but they're related questions and in order to get to what value added counsel can bring in terms of the refusals motion and I grant that it's a circumscribed area in which one could provide advice or representation to the witness, I think we first need to deal with the question of intervention. So I would like to make submissions on both issues but for the purpose of today, the focus and I would say the first step is with respect to intervener status which deals with I guess my role here at all in the motion to come.

So the first issue I guess, maybe before we even get into the applicability of 13.01 as you know, 13.01 refers to a proceeding. My friend refers to case law which suggests that discrete intervention on a

5 motion is inappropriate because a motion is not a proceeding. And you've seen our factum on this issue and I'll just point you to the authority in Finlayson [ph] and that's at tab three of our materials. And so looking at paragraph 17 through 26 of that decision and more in particular the bottom of page five, top of page six is where the Court goes through the statutory interpretation exercise of determining whether the language of the rule could sustain interpretation of motion being a proceeding and how the Court resolves this at paragraphs 18 and 19 is it says there's an easier way to deal with this and one can do this by way of the inherent jurisdiction of the Court. And my apologies, at 24 and 25 is where the Court gets into this analysis and specifically 25. It says at the top of page six,

20 "The Court has an inherent jurisdiction to control its own process and such jurisdiction includes determining important issues of whether a person may intervene et cetera."

25 So on that score Your Honour, I think that there is authority for the ability and the inherent jurisdiction of the Court to allow a person intervention on a discreet motion. I draw your attention by way of example and I think this might have been - I think this did proceed; you were involved in the file, Your Honour, but in the defendant's motion record at pages 171 to 177 is an excerpt of the transcript of proceedings before Justice Beaudoin and that was a discussion around

30

5 the necessity to serve the University of Ottawa who was seeking intervention on the Champerty Motion as I understand it. The Court decided for that purpose and in particular I'll just note it that page 174 of that transcript that the University of Ottawa's affected in that motion and would be entitled to intervene on it and should be asserted and....

THE COURT: That was under Rule 37....

MR. HAMEED: 107.7.

10 THE COURT: 107?

MR. HAMEED: Yes. And so the issue - I guess the discreet issue about whether one can intervene on a motion which I think is the first thing you need to deal with, has been dealt with before in this proceeding. The Court deals with these issues as they arise but what I'm suggesting to you is that....

15 THE COURT: Do you fall within 30 - you're not arguing that you fall with Rule 37.07, you're arguing 13.01?

MR. HAMEED: That's with respect to service, Your Honour, of the Notice of Motion but I guess what I'm contextualizing here is that in a past motion for intervention where there is some evidence on the Record of how this Court had dealt with it....

25 THE COURT: Do you fit into 37.07?

MR. HAMEED: I'll deal with that....

THE COURT: That's not what you're asking me for. You're asking me to add you as an intervener in 13.01.

30 MR. HAMEED: That's....

THE COURT: Or are you asking 37.07?

5 MR. HAMEED: 37.07(1) and I could get to that is with respect to service of the Notice of Motion for a motion that is brought by a party. The issue is whether a person affected should be served with that.

THE COURT: Right.

MR. HAMEED: And what I'm indicating to you....

THE COURT: If she's a witness. She's not a third party; she's filed an affidavit in the proceedings.

10 MR. HAMEED: There are two issues, Your Honour and I'll I'm stating to you is that the specific issue and why I draw your attention to that is that an intervener in this proceeding intervened with respect to a specific motion.

15 THE COURT: No, not an intervener. It's Rule 37. They were affected by the motion sought; it's a different test; isn't it? It's not the same test.

MR. HAMEED: As an affected person, Your Honour, I think that it is...

20 THE COURT: Same test?

MR. HAMEED: ...the same test. It is the same test. But we'll go through that in terms of the factors and maybe we can look at that point right now.

25 Under 13.01(1) there are three subsections, A, B and C. It's - A is with respect to interest in the subject matter, B is the person that may be adversely affected and C that there exists common issues of law and fact. And what I would suggest to
30 you is that in substance the affected person test under 37.07(1) is what we find in B; sub B that a person may be adversely affected. So the case law

in that and I'll take you to that in a moment and Mr. Dearden has put some of that into his materials and I'll get to that. But I would submit, Your Honour that....

5 THE COURT: So how would she be adversely affected by this? If she's a witness and she testifies as many witnesses testify in trials, let's assume it was a trial.

MR. HAMEED: Yes?

10 THE COURT: And she testifies, she may well do and presumably I don't know, it's another question on the witness list and who's going to be a witness. So if she's to testify at trial, is she somehow special from other witnesses in this proceeding?

15 MR. HAMEED: Well, maybe I can take you straight away....

THE COURT: Is the witness - usually what a witness, as you're no doubt aware, what a witness testifies to in Court is privileged and you cannot be sued for your evidence in Court unless there's a perjury issue but that's not - I don't think we're at that - this is simply, witnesses testify all the time.

MR. HAMEED: Right.

20 THE COURT: And they don't get lawyers to represent them. We'd have - our whole system would collapse every time a witness testified.

MR. HAMEED: So let's....

THE COURT: Nor would they want to pay a lawyer.

MR. HAMEED: Certainly. I understand.

30 THE COURT: Or hire a lawyer. And they're privileged. There's no risk to a witness. The whole purpose of the privilege is so they're free to

tell the truth without fear of being sued or liable or any other action. So that's the protection that witnesses have.

MR. HAMEED: Certainly.

THE COURT: So that what's the adverse affect of someone testifying under privilege, telling their story?

MR. HAMEED: Okay. Perhaps we can get into that right now.

THE COURT: Well, it's one of the three factors so I'm - most witnesses aren't adversely affected...

MR. HAMEED: And....

THE COURT: ...if they're telling the truth. I mean how would they be adversely affected?

MR. HAMEED: Well, the first question Your Honour to determine is....

THE COURT: If they're privileged and can't be sued? They're not a party, they're not going to be found liable, they don't have to pay costs; right? The witnesses don't pay costs of a proceeding. You know, we have either the - and that's a separate issue whether...

MR. HAMEED: That's a separate issue.

THE COURT: ...the University should be paying issue but I mean costs are a real - witnesses don't pay costs; do they?

MR. HAMEED: Perhaps we can deal with what the jurisprudence considers as an affected person?

THE COURT: Well, adversely affected?

MR. HAMEED: Yes, adversely affected. In order to get to adversely affected...

THE COURT: Right.

MR. HAMEED: ...we have to figure out who's affected; are they affected?

THE COURT: Are witnesses affected?

MR. HAMEED: Yes.

THE COURT: How is a witness affected?

MR. HAMEED: Your Honour....

THE COURT: Because they're just giving evidence in the proceeding.

MR. HAMEED: I understand. I understand your concern. So if we can deal with the question of an affected person....

THE COURT: I'm assuming it's truthful evidence?

MR. HAMEED: Yes.

THE COURT: Maybe - that may be challenged, witnesses may be challenged on their credibility. Mr. Dearden wants to challenge, he's said what the grounds are that he challenges whether she's a friend of Mr. Rancourt's or she's I don't know, on his side or something like that.

MR. HAMEED: So....

THE COURT: So Mr. Rancourt may be affected by the - I mean that's the whole point of a lawsuit.

MR. HAMEED: I understand, Your Honour. So there are two principles that I want to get to...

THE COURT: Okay.

MR. HAMEED: ...and I understand perfectly what the Court's concerns are.

THE COURT: Right.

MR. HAMEED: So let's deal with the first one about as the Court has raised I guess, exposure or potential witness liability.

THE COURT: Yes, sure. Let's see, is there any liability....

MR. HAMEED: Okay? Okay sure, let's deal with that.

THE COURT: ...any liability to Mme. Gervais?

MR. HAMEED: Got it. So if I could turn you to tab five of the factum casebook of the applicant, that's the Vapor case. And particularly I want to draw your attention to paragraph four where this is a decision of the Federal Court trial division, a dated decision, one of the seminal decisions to discuss, when a right to counsel may be appropriate for a witness. And if we look at the bottom of page four, it talks about just near sort of the middle of that paragraph,

"This does not mean that because counsel can be present during cross-examination as an officer of the Court under Section 11.3 of the Federal Court Act where as a mere spectator he has carte blanche to cross-examine the witness or object."

Next sentence,

"This of course is a function that must be left to counsel for the parties and no other counsel is entitled to intervene unless of course the fundamental rights of the witness are denied or would otherwise remain unprotected in which the case of the Canadian Bill of Rights may come into play."

And so that's the ambit, Your Honour, is that are fundamental rights of the witness engaged?

THE COURT: So it goes on though; doesn't it? It says,

"This should only occur in exceptional cases where such fundamental rights are infringed. It does not entitle a witness to services or right of counsel at all times."

MR. HAMEED: That's correct, Your Honour.

THE COURT: Are the fundamental rights - so there's some case law on religious rights...

MR. HAMEED: Yes.

THE COURT: ...whether the witness wanted to wear a....

MR. HAMEED: Nicab.

THE COURT: Nicab or not, they have a fundamental interest in how she - he or she, I think it was she in that case...

MR. HAMEED: Yes.

THE COURT: ...testified.

MR. HAMEED: And so....

THE COURT: Is there a fundamental right engaged here?

MR. HAMEED: Yes. Yes, Your Honour. This is the analysis and let me take you to one more part of the same paragraph and then I'll get into what the thrust of our analysis here. Look at the bottom of paragraph four, it says,

"When on the other hand he is merely as the witness testifying on matters which do not involve any incrimination or other constitutional safeguards, he must answer the questions he is asked and no counsel should intervene on his behalf."

So the question to be asked is, are there constitutional rights, constitutional safeguards at

5 play? Is there an exposure or a potential
contravention of the rights of the witness and in
this case, Your Honour, the submission of the
intervener is that where - and Mr. Rancourt in his
response to the substance of the motion talks about
what the parameters are of proper cross-
examination....

THE COURT: This is sort of a separate issue...

MR. HAMEED: A separate issue.

10 THE COURT: ...that Mr. Rancourt is almost acting as
her counsel. It's an unusual...

MR. HAMEED: I understand, Your Honour. So....

15 THE COURT: ...role but he is a self represented
party who's representing himself. But how - he has
intervened in Ms. Gervais who is actually a lawyer,
is my understanding correct?

MR. HAMEED: No, Your Honour.

THE COURT: She's not a lawyer?

MR. HAMEED: She's not a lawyer.

20 MR. DEARDEN: She's graduated the faculty of law,
Your Honour.

THE COURT: Okay, she's not called to the Bar.

MR. DEARDEN: She passed law school.

25 MR. HAMEED: So what I'm indicating, Your Honour, is
there's an ambit of permissible questioning in
cross-examination plus....

THE COURT: And that's an issue that Mr. Rancourt
has addressed...

MR. HAMEED: Right.

30 THE COURT: ...and whether it's relevant or not...

MR. HAMEED: Exactly.

THE COURT: ...whether it's appropriate.

MR. HAMEED: Exactly.

THE COURT: So there's a whole refusal of charge and...

MR. HAMEED: Right. Exactly.

THE COURT: There's a response to refusal of charge and all of this.

MR. HAMEED: But when you're making determinations about issues that go solely to credibility, do they overstep the line? And that's an issue that you'll have to deal with. You have to deal with it on refusals, right?

THE COURT: Okay.

MR. HAMEED: We're not dealing with it now.

THE COURT: Do you have any cases where credibility of the witness is a ground for having a separate legal representation?

MR. HAMEED: I do not.

THE COURT: Because I mean, I don't think they exist. Credibility is something witnesses are challenged on every day.

MR. HAMEED: But here's the answer to your question...

THE COURT: Right.

MR. HAMEED: ...two part analysis, is the witness affected or will the witness be affected by the order?

THE COURT: The witness is not affected; it's Mr. Rancourt whose witness...

MR. HAMEED: I understand.

THE COURT: ...may be undermined, may be found to be credible, you know. So it may affect his case.

MR. HAMEED: I understand.

THE COURT: His case if....

MR. HAMEED: If you can just let me finish this thought and then...

THE COURT: Right.

MR. HAMEED: ...I'll answer the Court's questions?

THE COURT: Yes.

MR. HAMEED: Is the witness affected by your order in terms of what the order seeks? And the order seeks specifically to have Ms. Gervais attend at a cross-examination and answer questions and that she not be prevented from doing so by the interventions of Mr. Rancourt. So your order will affect her rights. I think that's uncontested, it will affect the rights. Forget about the definition of affect person, I'm just talking about a plain language definition of her rights being affected. Your order....

THE COURT: Are they her rights or are Mr. Rancourt's evidence that he may wish to not have entered in the lawsuit? He doesn't want her to answer certain questions about say their relationship; are they close friends? Are they not close friends? He refuses to have that - that may affect Mr. Rancourt's...

MR. HAMEED: But Your Honour....

THE COURT: ...evidence. Does it affect her? How's the witness has no skin in the game if we say. The witness is not a party, there are no costs.

MR. HAMEED: There are two points that I want to get across here.

THE COURT: How are they being affected? You've got to get to me. How is she affected?

MR. HAMEED: First of all, your order Your Honour, if you agree for the plaintiff's motion, you're going to order the witness to answer questions in a manner that's appropriate, that you deem appropriate.

THE COURT: Certain areas.

MR. HAMEED: Certain areas.

THE COURT: Some maybe not all. I don't know, we'll see.

MR. HAMEED: So the force of your order...

THE COURT: Right.

MR. HAMEED: ...will compel her to attend. It will affect her liberty interest, it will make her...contempt of Court that she must attend and she must answer those questions. It's clear. You have that ability to do and that's what you'll turn your mind to as a base.

THE COURT: Isn't that true for every witness...

MR. HAMEED: It's true for every witness...

THE COURT: ...that files and affidavit? So it's true for every witness?

MR. HAMEED: It's true for every witness.

THE COURT: Okay.

MR. HAMEED: And so what we're talking about, the first question is, are her rights affected? Yes. Your concern is, well, that's true for all witnesses. But where the issue arises and this is what the Vapor case speaks to, are fundamental rights engaged and what the submission is as intervenor is that yes, fundamental rights are engaged as part of the analysis when in conjunction with what you need to do to determine separating the

5 wheat from the chaff what's relevant and
permissible, versus what's not, there are certain
questions which will be solely directed to the
credibility of that individual in terms of several
things. In terms of who she associates with, in
terms of what she express, in terms of beliefs that
she has, in terms of a number of issues which
clearly....

10 THE COURT: I don't think her beliefs are being
sought.

MR. HAMEED: Her beliefs are being sought, Your
Honour.

15 THE COURT: Are her beliefs being sought in this -
in her - I mean her credibility is always something
that can be - I think it was more to establish her
relationship, that she's a good friend of Mr.
Rancourt's and therefore may be partisan and
therefore less weight. That's what I understood
generally, the...

20 MR. HAMEED: Yes.

THE COURT: ...thrust of his questioning.

25 MR. HAMEED: Yes, but as part of that Your Honour
and your concern, the concern of the Court which is
a legitimate one is that if we open it up for this
witness, doesn't that mean that every witness can...

THE COURT: Gets counsel.

MR. HAMEED: ...bring a lawyer.

THE COURT: Right.

MR. HAMEED: And will this not sort of follow.

30 Well, what I'm stating to you in the first part of
it is that yes, her rights will be affected. You
will do that, you will make an order compelling her

5 to answer questions, her rights will be affected.
But related to that, Your Honour, the fundamental
rights that are engaged are her rights to freely
associate and freely express on issue of a personal
matter that are protected by Section two of the
Charter. So in that sense Your Honour, you've -
you're familiar, I won't take you to unless you want
me to take you to the McCab case where we're talking
about a Section 2(a) freedom of religion and
10 conscious issues, that's a kind of right that the
Court is alive to. What about a Section 2(b) issue,
freedom of expression? And if we look at page four
of our factum....

15 MR. DEARDEN: Your Honour, I'm sorry to interrupt my
friend but he did start at 20 after 10.

THE COURT: Okay. Well, I interrupted with some
questions. So let's...

MR. DEARDEN: I appreciate that.

THE COURT: ...say another five minutes.

20 MR. HAMEED: Thank you, Your Honour. I appreciate
that. So if you look at page four of our factum,
Your Honour, this is not an exhaustive list and I
don't pretend that it is but it's just to give you a
flavour of some of the questions that were asked.
25 Question nine asking whether she's friends with the
defendant, that's an association issue. Her
personal....

THE COURT: I mean if every witness, take a criminal
proceeding, this is not a criminal proceeding.

30 MR. HAMEED: Yes.

THE COURT: Witnesses who are friends of the accused
I mean it's relevant if you're someone's buddy or

you're not, if you're an objective observer the weight of your evidence is treated differently; maybe, maybe not. But it's a factor that's legitimate; isn't it?

MR. HAMEED: In this case....

THE COURT: In a criminal case you'd say,

"Well, are you good friends? Or do you know this person since childhood? Are you an impartial, independent observer?"

But wouldn't you want to know that?

MR. HAMEED: In this case, Your Honour, the questions that....

THE COURT: It's done all the time. It's done all the time certainly in the criminal Court. Civil....

MR. HAMEED: And you're correct. You're correct. Sometimes credibility can be and is an issue.

THE COURT: It's almost always an issue.

MR. HAMEED: In this instance, Your Honour, and I'm not - I guess what I'm doing with respect to intervention is to suggest that there is an area that you need to consider in terms of the witness's rights.

THE COURT: Special. Special.

MR. HAMEED: That's special. The issue of relevance you know, in terms of where to draw those lines, that's what the parties will deal with. But I'm just telling you that there are rights engaged and you're - the thing that the Court is struggling with here is, how is this different for this witness? And what I'm indicating to you is first of all, there's clearly an engagement. You will make an

order or you may make an order affecting the rights of this individual. The charter is engaged because the liberty interests of the witness are at stake. That's - I think that's clear. Moreover, Your Honour, what I'm also suggesting to you, quite apart from whether this is run of the mill or not, and I would suggest to you that it's not, there are certain issues about beliefs and association, background, et cetera which are personal to the expression and association rights of the individual. That's what I'm putting to you under Section 2(b) of the charter. According to the Vapor case, there are areas in which a witness's obligation to provide answers may be circumspect and when you ask the initial question about,

"What's the exposure? What's the liability of this individual?"

The effect, Your Honour, is that when you ask questions about essentially were you a friend of; what is your belief with respect to this; were you critical of an individual; did you support a certain issue, yes or no? These kinds of questions, granted they may or may not fall within the permissible scope of credibility, proper credibility questions but they certainly engage with the rights of the individual to do or not to and associate or not associate with people who she wants. And what the submission is, is that by pursuing these questions, by probing these questions, affects and creates a chilling effect on the individual's right to freely

5 associate and engage in these Charter protected
activities should the witness be subjected to these
questions. The issue as to whether it's run of the
mill or not, is something you'll need to deal with.
But what the case law says is that there may be
limits, there may be limits to the permissible
questioning on cross-examination where fundamental
rights are engaged. And what I've submitted to you
10 this morning, Your Honour is that fundamental rights
are engaged. The Court will need to make that
determination when it hears question by question,
are these appropriate within the sort of the
relevant standard but additionally in terms of
exercising your discretion, you'll need to consider
15 the question and we're not doing that because we're
not after refusals motion stage but you'll need to
consider are these questions affecting a fundamental
right for which I think the plaintiff is going too
far in terms of encroaching on those Section 2
20 interests of the individual. So in that sense, Your
Honour, the fundamental rights are engaged and this
is an individual whose interests in that sense are -
her interests and her rights are affected. If
you'll bear with me one moment Your Honour and I see
25 the registrar nodding as to time.

30 The only other thing that I would add Your Honour, I
think that under 13.01 the Court's preoccupation is
how is this person adversely affected? I've given
you my submission under that. It goes to 13.01(b).
When we get to the balancing that the Court must do,
that's 13.01(2), you have our submissions with

5 respect to the discreet intervention that this
witness wants to make just with respect to how
personal rights are engaged. You may agree or you
may not agree with that submission but I think it's
appropriate that that submission be made to you and
you will need to determine not necessarily, I'm not
asking you to determine every question at this stage
but you need to determine whether this witness has
something useful to bring and I think you can only
10 do that when you contextualize each question in
terms of the submission that the intervener may
bring to the table on those questions. And so I've
given you some examples but in the motion proper....

15 THE COURT: I'm not going to determine whether the
witness has something useful to bring to Mr.
Rancourt's case. He's decided that she has
something useful to bring. That's why he had her
file an affidavit, I assume. But that will be for
the trial judge if this is - I don't know if this is
20 a trial she'll be called as a witness presumably.

MR. HAMEED: Let me tell you what I'm referring to
here. Page seven of our factum is a Buddy decision.
That's under 13.01(2). If you find that she meets
the 13.01(1) factor, one among the three, then you
25 go to 13.01(2) and you do a certain balancing. You
consider whether the added party's participation
will duplicate any process and by that when I'm
saying value added, I'm saying that we're not going
to just speak to the same issue as the defendant.
30 We're going to bring separate and apart. We're not
going to be duplicating, we're not going to be
adding new materials, we're simply going to be

circumscribed to this very issue that I'm presenting to you. So in that sense, I'm not talking about the larger action or the interest of the defendant, I'm saying that there is a specific interest of the witness that you need to consider when you make your decision.

THE COURT: Thank you.

MR. HAMEED: Thank you, Your Honour.

THE COURT: Mr. Dearden?

SUBMISSIONS BY MR. DEARDEN:

Your Honour, I'm going to refer you to a factum but just before that I do that, I can't let this Section 2(b) Charter argument sit there like that. Your Honour, there is no comparison between a religious freedom to wear a veil while testifying and whether a witness somehow has their freedom of expression rights chilled if they, like any other witness who is cross-examined on an affidavit are compelled to re-attend because the objection is not upheld on the first cross-examination. Ms. Gervais did come for that first examination and never indicated that her freedom of expression was somehow affected. Our adversary system would grind to a halt, Your Honour, if every witness who's cross-examined on an affidavit or who's testifying in trial can say,

"Oh no, you're ordering me to answer this question and I'm going to be chilled on my free speech."

5 That Your Honour, I've been battling in this
courthouse since 19 - well, not in this courthouse
because it didn't exist but since 1982. The very
first case involving Section 2(b) of the charter was
decided by another Justice Smith, Aylmer Smith and I
was co-counsel in that with former Chief Justice
Jean Richard and I've battled hard for Section 2(b)
freedom rights and it is an insult to hear this
10 submission. It really trivializes what Section 2(b)
of the Charter means for this Court to be told that
somehow Ms. Gervais will be chilled if she is
compelled to answer questions like the one my friend
just pointed out to you. As you say, it would be
true for every witness and every witness probably
15 has their credibility challenged whenever they're
under cross-examination. There is nothing new about
that proposition. It is only, Your Honour, in
exceptional cases that a witness would have a right
to counsel and of course there's no case that would
20 allow this witness to appear as an intervenor and my
friend was candid enough to admit that. She is not
special; she is a partisan supporter of Mr.
Rancourt.

25 Now, if I could ask Your Honour to look at my
factum, please. There should be a document Your
Honour that has 13 tabs to it. It's the factum of
Joanne St. Lewis on the motion to intervene. And
Your Honour, if I could take you to page four,
30 paragraph 17 first of all deals with that Mr. Hameed
has no standing to represent a non party witness.

And you'll see in paragraph 18, Your Honour, the Vapor decision says,

"It's exceptional cases and only when such fundamental rights are infringed."

There is no fundamental right that is infringed by having Ms. Gervais re-attend for cross-examination and answer any questions that the Court decides she must answer on the refusals motion. There are no fundamental rights infringed. There's no self incrimination here, there's no exposure to civil liability by Ms. Gervais answering questions truthfully.

Ms. Gervais volunteered this affidavit on behalf of Mr. Rancourt's motion, in support of Mr. Rancourt's motion and she freely followed his over 90 objections to questions I asked her during the cross-examination.

And Your Honour, to hear the claim that her freedom of expression or her reputation is affected if she has to answer one or more of the refusals that are initiated in the refusals motion, really rings hollow when you consider the purpose of her affidavit. And that purpose, Your Honour, is found in paragraph three of Mr. Rancourt's factum which you don't need to turn up. All you need to know is that he is relying on Ms. Gervais' affidavit for the proposition or for the proof that Professor St. Lewis has repeatedly made false sworn statements

5 during her examination for Discovery. That's what that affidavit is put in for. It's shocking to me that you accuse a lawyer and a law prof of repeatedly making false sworn statements and you come before this Court and say,

"My liberty interest or my 2(b) Charter freedoms are encroached."

10 It's just preposterous in my respectful submission, Your Honour.

15 And I'd ask Your Honour throughout the day to keep in mind a finding of Justice Cory in Hill and Church of Scientology case. And I'll be getting to that later in the day when we deal with refusals on the liable action.

20 Just to make a note, Your Honour, at tab number eight of our Book of Authorities, paragraph 177, tab eight, paragraph 177. Justice Cory made the point, because as we know Casey Hill was a Crown attorney, a lawyer, when he sued the Church of Scientology and Justice Cory made the point for all lawyers their reputation is of paramount importance. Paramount
25 importance. Anything that leads to the tarnishing of a professional reputation can be disastrous for a lawyer.

30 So Mr. Rancourt, under the cloak of privilege in his factum has claimed that Ms. Gervais' evidence proves that Professor St. Lewis repeated false - repeatedly

made false sworn statements during her examination for discovery which of course we reject and actually are stunned that such an allegation or accusation, it's not an allegation, it's an accusation.

In those circumstances, Your Honour, it's my submission that of course Professor St. Lewis is entitled to test the reliability, independence and credibility of Ms. Gervais' affidavit evidence and has no choice but to do so in light of the seriousness and gravity of that accusation that Mr. Rancourt has made and is using Ms. Gervais affidavit evidence as his own proof, that's the only proof he's got is Ms. Gervais affidavit. Your Honour, you must...

M. RANCOURT: Une objection?

MR. DEARDEN: No, no.

THE COURT: No, no. It's Mr. Hameed who is the party here to the preliminary issue.

M. RANCOURT: Une objection de procédure. Monsieur Dearden est en train d'argumenter la cause....

LE TRIBUNAL: No.

M. RANCOURT: La prochaine cause.

LE TRIBUNAL: Non, non, on entendre la prochaine matière.

MR. DEARDEN: Thank you, Your Honour. To finish on that point, Your Honour, which is really set out in paragraphs 32 through to 37 of the factum which a cross-examination on an affidavit relating to reliability, independence and credibility is proper. The weight to be given to Ms. Gervais' affidavit, if any, has to be assessed against the reliability,

independence and credibility of her affidavit evidence. Mr. Rancourt, for some reason, just automatically assumes that Ms. Gervais' recollection and all we're talking about here, Your Honour, by the way, is what's the recollection of the date of meeting - date of the meeting that Ms. Gervais and Professor St. Lewis had four years ago. That's all we're talking about here and somehow the leap is that there are repeated false sworn statements made by Professor St. Lewis during her examination for discovery as to when she recollects that meeting occurred and Ms. Gervais has a different recollection. It's a disturbing leap, but the Court can't make a determination about the weight to be given Ms. Gervais' conflicting recollection of an event that occurred back in 2008, without the Court knowing the reliability, independence and credibility of Ms. Gervais' affidavit evidence. So she wants to have her counsel but she wants intervention status when she can't, in my respectful submission, Your Honour, even get past the first issue which is whether Mr. Hameed has standing to represent her by sitting beside her during the cross-examination if further cross-examination is ordered because the exceptional case that Vapor and the other cases require. It just isn't there. There is no fundamental freedom of liberty at stake at all. She comes back just gives answers to questions asked truthfully just like she did in round one of the cross-examination. She doesn't get past 13.01.1 of the rule for intervention because she must be adversely affected, Your Honour, and I'd

ask you to turn to paragraph 30 of my factum as to what the Court of Appeal said just affected an affected person as opposed to an adversely affected one. Paragraph 30 of the factum, Your Honour, refers you to the Ivandaeva case, I'm probably mispronouncing that but the Court there said,

"That to be affected by an order, the person...."

Let me say that again,

"The person is said to be affected by an order if it directly affects the rights of the party in respect to the proprietary or economic interest of the party."

You have no evidentiary foundation, Your Honour to find that Ms. Gervais is affected by the order sought. And *aforecceori* [ph], you don't have any evidentiary foundation that Ms. Gervais is adversely affected if she's ordered to re-attend on cross-examination and answer whatever questions she's ordered to answer arising out of the refusals motion.

So in my respectful submission, Your Honour, the test for intervention has not been met from the legal requirements and it's not been met from the evidentiary foundation requirements for you to allow Ms. Gervais to intervene.

THE COURT: Thank you. Any reply?

MR. HAMEED: Thank you, Your Honour.

REPLY BY MR. HAMEED:

5 Briefly, I draw your attention - I thank my friend
for referring to the Court of Appeal decision in
Ivandaeva which talks to what constitutes an
affected person. That's tab six of his materials.
And two points that I wish to make with respect to
10 Ivandaeva, one is the context of that decision where
in that decision it was about two separate actions,
one regarding a matrimonial dispute between the
Ivandaeva's and a commercial dispute between a third
party and one of the Ivandaeva. A ceiling order was
put on proceedings regarding the matrimonial
15 dispute, the third party tried to get that ceiling
order lifted by saying that information in the
matrimonial dispute was relevant to the commercial
dispute. And in that context the question is well,
can you come to this Court and say you're affected
20 by that ceiling order? Which is a different context
in which the plaintiff comes before the Court and
says,

25 "We want to compel the attendance of a witness
to do X or Y."

So that's one - number one, that's a different
context.

30 Number two, if we look at page 10 of the Ivandaeva
decision, my friend is correct to say that the
common law - and this is at paragraph 27, Your

Honour, I'll give you a moment if you want to go there.

THE COURT: That's fine.

MR. HAMEED: In the normal course we speak about the economic or proprietary rights or interests of the party and this is the middle of paragraph 27.

Thereafter it's written,

"In addition there was another broad group of cases usually arising from the ceiling order of a Court file in which the media has complained that its right to freedom of expression as guaranteed by Section 2(b) has been compromised."

And so what that says Your Honour is that where rights are at stake, granted we're not talking about the open Court principle and certainly not in what I'm bringing before you today. But this notion that affected party is simply limited to economic and proprietary interests is not a blanket.

THE COURT: I don't think he's - I think he acknowledged that the Vapor case expands that if you add the McCab case or you have a fundamental right that a witness is affected by. That's also in exceptional cases. I think I understood that and your position I....

MR. HAMEED: Okay. And so just to put that together.

THE COURT: The two would have to be one or the other...

MR. HAMEED: Yes.

THE COURT: ...to be affected. So you're acknowledging there's no...

MR. HAMEED: Economic or proprietary interest.

THE COURT: ...property. Your argument's on the...

MR. HAMEED: On the rights.

THE COURT: Charter rights?

MR. HAMEED: Yes, on the Charter rights and I guess my other point in reply, Your Honour, is that....

THE COURT: But if, just to extend the reasoning a little further, that it would - it is actually your position that the witness would not have to respond to any questions that affected her credibility on a cross-examination because it would affect her freedom of expression?

MR. HAMEED: Let me....

THE COURT: That can't be right.

MR. HAMEED: Okay, well, let me be a little more clear.

THE COURT: Because you would say,

"Were you a friend of Mr. Rancourt?"

Ah, that's my freedom of association not answering that one. Is that the - that would be the logical....

MR. HAMEED: No, let me be clear.

THE COURT: So you agreed that's a permissible question?

MR. HAMEED: It depends. It depends, Your Honour.

THE COURT: Well, in this case. Let's say in this case. Will you be saying,

"I object."

And then we'd be back here again for another motion to say,

"Is that a Charter or offending Charter?"

5 MR. HAMEED: Your Honour, what my role in intervention would be, would be to speak to the rights of the witness. What you need to decide and I think that this goes to my friend's submission is that what the witness is doing is she's trivializing to the expression. That's a position that the plaintiff would take and I could understand why the plaintiff would take that position but what the Court needs to turn its mind to is is the right....

10 THE COURT: I'm not be ruling - the Court will not be ruling. They may be ruling on Mr. Rancourt's right to freedom of expression and whether or not the bounds of liable - it's a liable action, I'm not saying anything that's taking anyone by surprise, but Ms. Gervais is not accused of liable, there's no liable action against her. There's no one
15 contesting her right to make comment or whether it's on a radio, a show or on a - is there? Not that I'm aware of. There's nothing here saying the types of rights that are being sought is,
20
25

"Are you a friend of Mr. Rancourt's?"

You know? Or the text that says,

30 "I love you."

What does that mean? You know. I don't know. She could probably explain it and say it's just a -

"Maybe it was sarcastic; I've seen that response from Mr. Rancourt."

Or maybe it's - and if it's true - so if it's true, I don't - you know, does that - you're saying that's a Section - you're trying to expand that into a Section 2...

MR. HAMEED: But it's not...

THE COURT: ...right of freedom of expression?

MR. HAMEED: ...Your Honour it's not an expansion into that right. What I'm saying is the right is engaged. It is about the expression of Ms. Gervais.

THE COURT: So every witness then would be engaged with - I mean a witness speaks in the witness box. They are expressing freedom of expression but freedom of expression, there's no liable in the witness box but they have to answer questions if they're deemed to be relevant. Right? Isn't that...

MR. HAMEED: But here's....

THE COURT: ...the whole process would break down if everyone would say,

"No, I'm not telling you who my friends are; I'm not going to tell you if I know this person, if I've ever seen them before."

No witness would ever - because that would affect....

MR. HAMEED: Let me be clear on what....

THE COURT: That can't be right.

MR. HAMEED: Let me be clear on what my role is...

THE COURT: Right.

MR. HAMEED: ...Your Honour...

THE COURT: Right.

MR. HAMEED: ...and I don't wish to overstep. It's circumscribed and it's specific not to tell you how to exercise your discretion in the event that you find a borderline question, that's for you to decide. But what I would be here to do on the intervention or rather on the refusal motion is to say,

"This is how for question nine the right is chilled; this is a freedom of expression issue. This is a freedom of association issue."

In making your order you will engage the liberty interest of the witness and in exercising your discretion whether to compel her or not, your order will be Charter compliant. And so all I will be doing is be making circumspect submissions on a right that you will have to take into consideration. You may agree with my submission or not but Mr. Dearden's submission to you today is something - or rather in the context of this motion is something that he can say with respect to question nine or question 14 or 44 that you know, don't - you know, don't agree with that submission. He's overstepping, he's going too far. But the engagement of that right is something that the witness is entitled to bring. And I think in the context of how you determine these refusals, you

5 need to consider the relevance issue, you need to
consider the permissible scope or credibility and
that the parties deal with that. I'm bringing you a
different issue, I'm bringing that to the table and
you will deal with that on a question by question
basis. And so it's not to open the floodgates with
respect to every question and it's not for me to say
for every question it's impermissible. But
necessarily you will be engaging the Charter and
10 making a decision where Charter interests are at
stake.

15 And so in that sense Your Honour with respect to the
intervention motion, I'm or with affect to refusals
motion, I would be making these discreet
submissions. If we fast forward to what if any role
I may have with respect to cross-examination on the
affidavit itself, again, depending on how you rule
on the intervention motion and depending on what
20 your perspective is on individual questions, I may
have nothing to say with respect to many questions.
But that's a ruling you will need to make. The
basic engagement of the right is there. My friend
has a different perspective of how significant that
25 is. He says that I'm trivializing the right. The
right is engaged. That's my submission and I think
it stands on the facts.

THE COURT: Thank you.

MR. DEARDEN: Your Honour one quick reply.

30
REPLY BY MR. DEARDEN:

I've heard nothing where a Charter right has been engaged. When somebody swears an affidavit voluntarily, goes through a cross-examination and is subject to a refusals motion. That just cannot be, Your Honour. And there's - you have no authority before you or evidence to come to that conclusion.

M. RANCOURT: Monsieur le Juge...

LE TRIBUNAL: Oui.

M. RANCOURT: ...vous avez entendu une réponse à la réponse de monsieur Dearden.

LE TRIBUNAL: Oui.

M. RANCOURT: Et je suis une partie dans cette action...

LE TRIBUNAL: Oui.

M. RANCOURT: ...et j'ai quelques mots à dire pendant une minute.

LE TRIBUNAL: Okay, une minute.

M. RANCOURT: D'accord. Alors voici, premièrement je sens qu'il y a dans cette action, globalement, si on regarde ce qui se passe dans les motions de refus et avec les - les témoins, il semble y avoir de ma perspective deux fois deux mesures, parce que monsieur Giroux était un témoin à moi, que j'ai appelé dans la motion Champartie et il a été représenté en contre-examinatoire (sic) par monsieur Doody, sans - et monsieur Doody a complètement dirigé cette session-là. Donc il était représenté et c'était un témoin - c'était pas un affiant, c'était un témoin que j'ai appelé.

Deuxièmement, vous avez demandé tantôt si les témoins peuvent payer des coûts dans des motions de

refus. Dans cette action monsieur Claude Lamontagne était un de mes affiants, il a fait des refuse et on a ordonné des coûts contre lui. C'était Master McLeod qui a ordonné des coûts contre le professeur Lamontagne.

Troisièmement, je veux signaler, Monsieur le Juge, que monsieur Dearden ne s'est jamais objecté au fait - donc tout les affiants que j'ai amené, monsieur Claude Lamontagne deux fois et madame Gervais une fois, il ne s'est jamais objecté à ce que j'agisse comme une personne qui peut parler et qui peut diriger un peu la chose un peu comme un avocat le ferait, et il n'a jamais demandé que les sessions soient arrêtées pour demander direction à la Cour. Il a toujours supposé que j'avais ce droit, il a même à un moment donné dit « Bien, c'est ambigu parce que vous êtes auto-représenté. » et on a continué. Donc il n'a jamais agi pour arrêter ou même signaler - ou même me signaler que j'avais pas le droit d'intervenir avec mes affiants de cette façon-là. Alors je pense que maintenant les arguments qui sont fait représentent un peu une situation de - de ma perspective, en tant que la personne qui voit ces choses-là dans la même action, il y a vraiment deux poids, deux mesures. Il y a - j'ai une inquiétude par rapport à ça, voilà.

LE TRIBUNAL: Okay, merci.

REPLY BY MR. DEARDEN:

Your Honour, just a quick reply there, Mr. Doody represented Mr. Giroux and President Roch and Celine

Deslormes because the University of Ottawa were given intervention status...

THE COURT: Status. Well....

MR. DEARDEN: ...and were allowed to file evidence.

5 Of course you could represent those witnesses as counsel. The Claude Lamontagne cost order that Master MacLeod made was because Mr. Lamontagne did not abide by an undertaking he had given me in cross-examination and I had to bring a motion to
10 compel him to comply with this undertaking and that's costs were awarded against him. I'm not sure I get the point that Mr. Rancourt's making about me not objecting to whatever. I can tell you this, during the cross-examination of Ms. Gervais, I
15 informed Mr. Rancourt repeatedly that because of his interference and his objections, which are over 90 objections, that I was going to seek substantial indemnity costs and I was quite disturbed by the amount of interference that occurred during those
20 cross-examinations. So I certainly had a lot of objections as to how he conducted himself during my cross-examination of Ms. Giroux - or Ms. Gervais.

M. RANCOURT: Juste pour répondre brièvement, monsieur Giroulx n'était pas un affiant, il était un
25 témoin que j'ai appelé. C'était mon témoin et donc par cette même logique, même si l'université avait le standing d'un party, c'était mon témoin, comme si on serait devant un procès devant un juge, il n'aurait pas eu le droit par cette logique - il
30 n'aurait pas eu le droit - monsieur Dearden est en train de rire, je ne sais pas pourquoi.

MR. DEARDEN: No because I had - I was plugged in and then Professor St. Lewis came up from behind me and made me jump three feet. And that's what I was laughing at. I didn't hear what you said actually.

5 M. RANCOURT: Alors je peux répéter pour monsieur Dearden. J'ai dit que monsieur Giroulx était mon témoin, il n'était pas un affiant dans la cause, il était mon témoin que j'ai appelé, il avait une notice pour qu'il se présente, que je lui ai servi
10 de façon équivalente à un service personnel et donc ce n'est pas pertinent à savoir que l'université - on leur avait attribué le droit d'un party dans cette motion-là. Dans cette motion-là l'université n'est pas une partie dans l'action mais uniquement
15 dans une motion très précise. Et pour - ce que monsieur Dearden n'a pas compris, ce que j'ai expliqué tantôt, c'est que j'ai agi avec mes affiants à maintes reprises et monsieur Dearden ne s'est jamais plaint de ce fait, il s'est peut-être
20 plaint des refus comme il dit, mais il s'est jamais plaint de ce fait. Il a jamais arrêté la session pour demander des directions et maintenant il veut prétendre que les témoins qui sont des affiants n'auraient pas droit à un avocat quand il les
25 contre-examine. Je trouve ça très gros vu comment cette action se dirige jusqu'à maintenant.

M. RANCOURT: Monsieur le Juge, est-ce que je peux me glisser aux toilettes deux secondes?

LE TRIBUNAL: Oui, oui, c'est sûr.

D E C I S I O N

SMITH, J. (Orally):

5 The decision is as follows: Ms. Gervais has filed an affidavit in this proceeding related to a motion brought by Mr. Rancourt. Ms. Gervais was cross-examined on her affidavit and during the cross-examination refused to answer approximately 90 questions as directed by Mr. Rancourt. Ms. Gervais seeks intervener status pursuant to rule 13.01 and
10 alternatively seeks to have her legal representation as a witness in these proceedings. Ms. Gervais does not argue that her proprietary or economic interest will be affected if she is required to answer questions relevant to her reliability, independence and credibility. Rather, Ms. Gervais submits that
15 her Section 2(b) Charter rights to freedom of expression and freedom of association will be affected.

20 In the Ivandaeva decision at paragraph 26 and 27 the Ontario Court of Appeal has held that to be affected, the individual's proprietary or economic interests had to be directly affected to allow intervener status. In addition at paragraph 27 the
25 Court of Appeal recognized another broad group of cases involving section 2(b) Charter rights where in those circumstances those rights may be compromised.

30 In the Vapor Canada v. MacDonald decision, the Federal Court stated at paragraph four that in a proceeding no other counsel was entitled to intervene unless the fundamental rights of a witness

are deemed or would otherwise remain unprotected in the case, in which case the Bill of Rights may come into play. I'm not sure about that last word but come into consideration. The Court added that,

"This however should occur in exceptional cases only and when fundamental rights are infringed."

Ms. Gervais has not provided any evidence of how her fundamental rights to freedom of expression or freedom of association would be adversely affected if she answered relevant questions in cross-examination on her affidavit which she voluntarily provided.

In summary, I find that Ms. Gervais is a witness and that this is not an exceptional case as her situation is not any different from any other witness who testifies or files an affidavit and then may be cross-examined on questions relevant to her credibility, reliability and independence. This questioning is carried on in each cross-examination that occurs of a witness in all trials and without some exceptional situation, a witness was protected by litigation privilege in the evidence that they give while testifying would not have any adverse interest affected. Ms. Gervais has not identified any question that has raised a Section 2(b) Charter right even though she was present during the cross-examinations and during her refusals to answer approximately 90 questions.

5 For the above reasons Ms. Gervais is not granted
intervener status and I find that this is not an
exceptional case where her section 2(b) Charter
rights are engaged sufficiently to justify her
having independent counsel.

10 THE COURT: So we'll take the morning break and then
we will proceed with the....

MR. DEARDEN: Just before the break...

THE COURT: Yes?

15 MR. DEARDEN: ...Your Honour, can I have permission
to file cost submissions with respect to the morning
that we've spent and the work that was done in
reviewing the factum of Ms. Gervais and of course
preparing our factum?

THE COURT: Yes, you may. Ten days for written
submissions.

MR. DEARDEN: Thank you, Your Honour.

20 THE COURT: Ten days to respond.

MR. HAMEED: That's fine, Your Honour. A question
with respect to the issue of standing, I understand
your reasons and I appreciate them. My question is
a procedural one.

25 THE COURT: Yes?

MR. HAMEED: In the event that my client seeks to
appeal the ruling...

THE COURT: Yes?

30 MR. HAMEED: ...given that this matter will proceed
and we will go to the next step...

THE COURT: Right.

5 MR. HAMEED: ...and the step thereafter, is this something that should be brought to the attention of the Court in this proceeding? And I say this so as to not derail what's happening here because it is a fundamental issue of standing. So I just raise that generally and I don't even know what the - what my instructions are on that issue.

10 THE COURT: Well, you have whatever rights to appeal that you have, I am certainly not interfering with those you have those full rights and you're entitled to advance those to the extent possible or as instructed. Okay? So you'll have 10 days to respond to costs...

15 MR. HAMEED: Thank you.

THE COURT: ...and that may be sufficient, 10/10. Okay. We'll take the morning break; we'll come back at shortly after 12.

R E C E S S

20 U P O N R E S U M I N G

THE COURT: Mr. Dearden, I guess you're first?

25 MR. DEARDEN: Yes, Your Honour. Your Honour one housekeeping matter, I've been taking notes with my Echo Smart Pen...

THE COURT: Yes?

MR. DEARDEN: ...and I had permission a long time ago from you...

THE COURT: Yes.

30 MR. DEARDEN: ...to let me use it...

THE COURT: Yes.

MR. DEARDEN: ...and I didn't think I had to repeat the permission?

THE COURT: Yes, you are. That's fine.

MR. DEARDEN: It's okay?

THE COURT: Yes.

SUBMISSIONS BY MR. DEARDEN:

So Your Honour, when we take an inventory of documents you should have before you in this refusals motion, this is regarding the cross-examination of Ms. Gervais that I conducted on August 16th, you should have the plaintiff's motion record, it says Refusals Cross-Examination on the Affidavit of Mireille Gervais and that would be 11 tabs.

THE COURT: Compendium Arguments?

MR. DEARDEN: You should have a Compendium Argument as well but what you should have a motion record refusals cross-examination, probably in that pile right there in front of you.

THE COURT: Motion Record, I have Mr. Rancourt's Responding Motion Record.

MR. DEARDEN: Right. And then you should have a factum from Mr. Rancourt as well dated October 24th?

THE COURT: Factum from Mr. Rancourt? Yes.

MR. DEARDEN: Right. And I would also ask Your Honour to have the factum that I used this morning handy because I'm going to reference it.

THE COURT: Okay.

MR. DEARDEN: And then do you, Your Honour, have the Motion Record of the plaintiff?

THE COURT: Yes.

MR. DEARDEN: Okay. So Your Honour....

M. RANCOURT: Juste un point par rapport aux documents, Monsieur le Juge, si je peux me permettre. Ce matin j'ai fait un objection que monsieur Dearden était en train de faire les arguments pour la prochaine motion, et effectivement il veut maintenant utiliser son factum de la première motion ce matin dans la motion présente. Il m'a pas du tout avisé qu'il allait faire ça. J'ai eu aucune notice à cet effet-là. J'ai - j'ai soumis mes matériaux en supposant que monsieur Dearden n'allait pas soumettre un factum parce qu'il n'a pas signé un factum dans les délais qui sont requis.

LE TRIBUNAL: Okay.

M. RANCOURT: Donc je n'ai - je n'ai pas eu ces matériaux pour argumenter cette motion.

LE TRIBUNAL: Non, mais vous avez eu une copie de ce factum - vous avez ce factum.

M. RANCOURT: Oui.

LE TRIBUNAL: Bon.

M. RANCOURT: J'ai ce factum.

LE TRIBUNAL: Bon, c'est bien. Donc les questions pour maître - madame ou maître, I guess c'est maître - c'est madame Gervais - madame, maître Gervais....

M. RANCOURT: Monsieur le Juge, madame Gervais n'est pas un avocat. Elle a....

LE TRIBUNAL: Non, okay, donc c'est madame Gervais.

M. RANCOURT: Je crois.

LE TRIBUNAL: Okay, c'est bien.

MR. DEARDEN: So Your Honour I just want to give you the backdrop here of why Ms. Gervais put her affidavit in.

THE COURT: No, just - is it on the - I asked this to Mr. - is it on the Champerty Motion?

MR. DEARDEN: No.

THE COURT: Or is it in the Discovery Motion?

MR. DEARDEN: No.

THE COURT: In which Motion is it in support of?

MR. DEARDEN: In support of Mr. Rancourt's Motion to compel Joanne St. Lewis to answer questions arising out of her examination for discovery and I'll give you the site, Your Honour. Paragraph 12, so this is the defendant's Notice of Motion.

THE COURT: This is the third one today?

MR. DEARDEN: That will be the next one. The one I'm referring to right now...

THE COURT: Right. Right.

MR. DEARDEN: ...is....

THE COURT: Is the next one and then you're motion is the third one or the fourth one today?

MR. DEARDEN: The fourth one with respect to the...

THE COURT: Okay.

MR. DEARDEN: ...examination for discovery of Mr. Rancourt. But if you make a note, Your Honour?

THE COURT: Yes?

MR. DEARDEN: Paragraph 12 of Mr. Rancourt's Notice where he seeks answers of Joanne St. Lewis on her examination for discovery and you probably don't have it in front of you...

THE COURT: No, I don't.

MR. DEARDEN: ...because it's the next pile.

THE COURT: The next pile of materials.

MR. DEARDEN: So if you just make a note Your Honour, in paragraph 12 of that Notice of Motion, so we'll call it Refusals of Plaintiff's Examination for Discovery, what he wants in paragraph 12 is an order compelling the plaintiff to attend a new and reasonably limited examination for discovery.

M. RANCOURT: Excusez-moi, Monsieur le Juge, juste pour clarifier quelque chose, est-ce qu'on a fini de parler des documents?

LE TRIBUNAL: Non...

M. RANCOURT: Parce que....

LE TRIBUNAL: ...il fait juste - cette indication - j'ai demandé à maître Dearden - bon, la même question je vous ai posé à matin...

M. RANCOURT: Oui.

LE TRIBUNAL: ...est-ce que c'était relié à la motion de champartie ou est-ce que c'était relié à des examens au préalable, donc c'est relié à l'examen au préalable....

M. RANCOURT: Uniquement.

LE TRIBUNAL: Il est d'accord avec vous...

M. RANCOURT: Oui.

LE TRIBUNAL: ...sur ce point-là.

M. RANCOURT: Et Monsieur le Juge j'aimerais - avant qu'on aille trop loin ce matin, j'aimerais signaler que maître Hameed suggérerait qu'il va peut-être - sa cliente et lui vont peut-être aller en appel de la décision de ce matin.

LE TRIBUNAL: Oui, mais ça c'est....

M. RANCOURT: Alors j'aimerais - je vais argumenter que votre - vos ordres sur les motions qui seraient affectées...

LE TRIBUNAL: Oui.

M. RANCOURT: ...soient retenues jusqu'à temps que - s'il y a un appel jusqu'à temps que cet appel soit entendu.

LE TRIBUNAL: Donc ça c'est pas des choses devant moi présentement, donc - si quelqu'un porte une motion, je vais l'entendre. À ce moment ici il n'y a pas de motion devant moi, donc je vais procéder avec des choses devant moi.

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay?

M. RANCOURT: Merci.

THE COURT: Okay.

MR. DEARDEN: So Your Honour you have paragraph 12 of Mr. Rancourt's Notice of motion for Joanne St. Lewis's examination for discovery saying an order compelling the plaintiff to attend a new and reasonably limited examination for discovery and the grounds you'll find at paragraph 14 of that notice and in paragraph 14 he says that that plaintiff has incorrectly advanced - the plaintiff has incorrectly advanced in the statement of claim, reply and the examination for discovery that she met with the Director of the SA - the Student Appeal Centre which is Ms. Gervais. Ms. Gervais is the Director of the Student Appeal Centre at the University of Ottawa. So she incorrectly, apparently, met with Ms. Gervais prior to completing her 2008 Assessment Report of the Student Appeal Centre Report.

5 M. RANCOURT: Monsieur le Juge je voudrais clarifier parce qu'il y a un problème de la langue parce que monsieur Dearden vient de dire quelque chose en anglais là, et je veux juste clarifier. Mon propos n'était pas de dire qu'un tel meeting ne serait pas approprié. Mon propos était de dire qu'un tel meeting n'avait pas eu lieu à cette date-là.

LE TRIBUNAL: C'est simplement la date de la réunion.

10 M. RANCOURT: Exact.

MR. DEARDEN: And I think that's what I was - I was reading - well, I'm reading directly from his paragraph 14 and I would really appreciate him stopping to interrupt me, Your Honour.

15 THE COURT: Okay, so I think - on va juste entendre - faites des notes, s'il y a des corrections à faire - faire des notes puis dès c'est à votre tour, vous pouvez les faire.

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay.

20 MR. DEARDEN: And Your Honour the - so let me just give you this fact to Your Honour just so you know who's on first and what's on second. The - if you make a note, Your Honour, in October of 2008, Ms. Gervais....

25 THE COURT: So the issue is that the date of this meeting was not as Ms. St. Lewis states it is. She says it either didn't happen or it occurred some other....

MR. DEARDEN: No, it occurred after.

30 THE COURT: It occurred after....

MR. DEARDEN: She said the meeting occurred after Joanne St. Lewis did an Evaluation Report of Ms. Gervais' report.

THE COURT: And Ms. St. Lewis says the meeting occurred before she did her report?

MR. DEARDEN: Correct. So Your Honour, if you look at tab seven of my motion record, just quickly turn that up, tab seven of my motion record, you'll see the Student Appeal Centre 2008 Annual Report...

THE COURT: Right.

MR. DEARDEN: ...that's the report that Joanne St. Lewis...

THE COURT: Ms. Gervais....

MR. DEARDEN: Sorry?

THE COURT: Ms. Gervais?

MR. DEARDEN: That's Ms. Gervais' report, the one that says,

"Mistreatment of students, unfair practices and systemic racism."

Tab seven of my record?

THE COURT: Yes.

MR. DEARDEN: That's Ms. Gervais' report and she did that in October of 2008. The President Roch asked Joanne St. Lewis to evaluate this report and Ms. St. Lewis - Professor St. Lewis did that evaluation in mid November of 2008. Professor St. Lewis' recollection of meeting with Ms. Gervais was that it happened before she issued her evaluation of Ms. Gervais' report and Ms. Gervais has a different recollection. She says that happened - that meeting only happened in September of 2009. So what's the

date the meeting occurred is the issue here. And Your Honour, I'm going to hand you a small compendium of argument that just extracts part of Mr. Rancourt's factum.

5 M. RANCOURT: Monsieur le Juge, pourquoi est-ce que monsieur Dearden ne m'a pas donné ça au début de la session d'aujourd'hui?

LE TRIBUNAL: Okay.

10 M. RANCOURT: Pourquoi est-ce que je le reçois pendant la motion?

LE TRIBUNAL: Bien, ça doit être un sommaire des documents - donc si t'as besoin du temps de vous préparer - s'il y a quelqu'un qui vous prend par surprise, bon - peut-être on prendre une petite pause, mais j'imagine c'est des documents tirés des motions puis des factums de vous et de maître Dearden.

15 M. RANCOURT: Je voudrais prendre une pause parce que je....

20 LE TRIBUNAL: Non. Non, non. Moi j'ai pas besoin de pause. Si moi j'ai pas besoin de pause, j'imagine vous non plus.

M. RANCOURT: J'ai une objection formelle...

LE TRIBUNAL: On va procéder, okay.

25 M. RANCOURT: ...à ce genre de pratique. J'ai donné quelque chose à monsieur Dearden au début de la session qui pourrait servir aujourd'hui, il aurait pu me donner ce livret en même temps, il m'a même demandé « Qu'est-ce qui est pertinent dans le document que vous me donnez? » je lui ai indiqué un
30 paragraphe qui est pertinent et maintenant il

m'arrive avec ça à la dernière minute, je ne sais même pas ce qu'il y a dedans.

LE TRIBUNAL: Okay. Bien, on va le voir ensemble.

M. RANCOURT: Oui, d'accord.

LE TRIBUNAL: Okay. Mr. Dearden.

MR. DEARDEN: Your Honour, I note the chess clock isn't counting against me with these never ending interrupting and it's really unfair. All I'm showing - all I've done here to try to expedite things and it's at tab one of this compendium Your Honour I've reproduced from Mr. Rancourt's factum paragraphs three and paragraph 24 where - this is where he makes the accusation that Professor St. Lewis repeatedly made false sworn statements during her examination for discovery. And that's why Ms. Gervais' affidavit has been filed. So you see in paragraph three he says,

"It's part the motion record for discoveries refusals motion, the defendant filed an affidavit of Mireille Gervais sworn on July 9th. The purpose of the said affidavit is to establish that the plaintiff made false sworn statements on May 1st, 2012 and in her Statement of Claim in order to support the defendant's request for an order that the plaintiff be re-examined. The said false statements relate to a meeting which the plaintiff alleges to have occurred between the plaintiff and Ms. Gervais."

And if you flip the page, Your Honour, the rhetoric goes up and it becomes,

"Repeatedly made false sworn statements on May 1st, 2012 regarding a meeting which the plaintiff

incorrectly alleges took place between the plaintiff and Ms. Gervais."

That's paragraph 24 of the factum, so repeatedly made false sworn statements.

So Your Honour, this is a discreet issue within Mr. Rancourt's refusal motion regarding the examination for discovery of Professor St. Lewis. So if Your Honour orders one or more questions that were objected to to be answered by Ms. Gervais, I would then complete that cross-examination and then we would set a date to deal with this discrete matter which would really be three issues. It would be whether Ms. Gervais' affidavit is admissible at all....

THE COURT: It's an unusual procedure...

MR. DEARDEN: That's for sure.

THE COURT: ...to file an affidavit in a discovery. I mean I've not seen that...

MR. DEARDEN: Neither have I Your Honour. In my....

THE COURT: ...frankly but it's, we'd have to look at the rules but....

MR. DEARDEN: Your Honour my primary position regarding the Gervais affidavit is all that it's doing....

THE COURT: It's on a motion. It's really filed in support of a motion.

MR. DEARDEN: The motion to make Joanne St. Lewis...

THE COURT: Further refusals.

MR. DEARDEN: ...come back on that meeting, on the topic of that meeting.

THE COURT: Correct.

MR. DEARDEN: But what it is Your Honour, is it it's an affidavit that's contradicting Professor St. Lewis' recollection and my main submission, my primary submission is going to be the parties to actions can't file affidavits of witnesses who should be called at trial to question the credibility of answers given on discovery. I mean talk about the system coming to a halt if you could say,

"I don't believe what you said at question whatever in your examination for discovery so I'm going to put in an affidavit of some witness who's going to contradict that so that I can get back at you to question your recollection."

That's just wrong to allow that would happen. That's my primary position but of course I don't know that the Court's going to agree with my position so I had to cross-examine.

THE COURT: Is it relevant? Would that - if the whole issue of this affidavit would that not short-circuit the whole cross-examination and the re-examination? I mean this is really an issue for trial, isn't it an issue for trial if Ms. Gervais says,

"No, no. I met on such a date and it wasn't this date."?

MR. DEARDEN: Sure it is. That's my primary position, Your Honour.

THE COURT: It's an issue for trial and you cross-examined at trial as to....

MR. DEARDEN: That's my primary position but....

THE COURT: So are we not wasting a lot of time for everyone dealing with this....

M. RANCOURT: Monsieur le Juge, j'aimerais savoir si...

LE TRIBUNAL: Non.

M. RANCOURT: ...vous être enfreint de prendre une décision en ce moment?

LE TRIBUNAL: Non, non. Non, non, non, je prend pas de....

M. RANCOURT: Vous simplement discutez des idées?

LE TRIBUNAL: Je discute des idées.

M. RANCOURT: D'accord.

LE TRIBUNAL: Je demande des représentations. Vous aurez votre...

M. RANCOURT: D'accord.

LE TRIBUNAL: ...opportunité. Est-ce qu'on est - je fais le commentaire, c'est pas le processus normal, donc est-ce que c'est une - est-ce que c'est permis, je suis en train de penser - mettons, ouvertement.

M. RANCOURT: D'accord.

MR. DEARDEN: Unfortunately, Your Honour in....

LE TRIBUNAL: Donc est-ce que - est-ce que tout ce processus qu'on passe ici - est-ce que c'est vraiment - bon, une perte de temps puis de - est-ce que c'est pas simplement - appelle les témoins au procès? Madame St. Lewis va dire quelque chose puis vous vous aurez vos témoins - non, non, non, c'est pas cette date-là, puis bon - je vais décider.

M. RANCOURT: Mais Monsieur le Juge, mon inquiétude c'est que votre discussion....

LE TRIBUNAL: Vous comprenez - non, c'est ma pensée.

M. RANCOURT: Oui.

LE TRIBUNAL: Je vous dis - est-ce qu'on avance quelque chose ici ou est-ce que....

M. RANCOURT: Mais votre - votre - votre discussion est basée sur les prémisses des données qui sont présentées par monsieur Dearden, je n'ai pas eu la chance de répondre....

LE TRIBUNAL: Non. Non, non.

M. RANCOURT: Alors....

MR. DEARDEN: That's just wrong, it's not true.

M. RANCOURT: Voila.

LE TRIBUNAL: Non, non. Okay.

M. RANCOURT: Et....

LE TRIBUNAL: Vous aurez votre chance. Vous aurez votre chance.

M. RANCOURT: Oui, parce que que....

LE TRIBUNAL: Mais je vous - je vous dis....

M. RANCOURT: Évidemment j'ai un point de vue complètement contraire de l'utilité de...

LE TRIBUNAL: Oui.

M. RANCOURT: ...cet affidavit et de sa raison d'être.

LE TRIBUNAL: Okay.

M. RANCOURT: Mon point de vue est - est complètement différent du sien.

LE TRIBUNAL: Différent de ça.

M. RANCOURT: D'accord.

MR. DEARDEN: Your Honour, the unfortunate response I have to give you to your answer about short circuiting is you can't do that because...

THE COURT: Can't do that because....

MR. DEARDEN: ...we're not sure what's going to happen. In the next leave application to Divisional Court is going to be we should have proceeded with the refusals motion and unfairness and so all I'm - all I was doing was putting on the record - and I did that with Mr. Rancourt at the beginning of the cross-examination of Ms. Gervais, I told him my primary position but then....

THE COURT: It's not admissible.

MR. DEARDEN: ...if the next one is what weight would be given, if any and in my submission it would be zero weight should be given to this affidavit which is used and it's the sole evidence used to support the accusation that false sworn statements were made by the plaintiff during her examination for discovery. So Your Honour I want to quickly get to the law.

THE COURT: Yes.

MR. DEARDEN: Well, actually first let me just hand up I've put a list of the categories of questions that you see on your refusals chart just so that you've got the gist of what's in play here. And these are the headings to the refusals chart. And that's the relationship between Mr. Rancourt and Ms. Gervais, the actual production of the affidavit that she did swear on July the 9th and what involvement had in that drafting, articles written by Ms. Gervais about Professor St. Lewis' evaluation of her

report, which goes in the category of she has an axe to grind and a personal interest in defending her own report versus what Professor St. Lewis wrote about that report, Ms. Gervais' criticism of Professor St. Lewis' evaluation, Ms. Gervais' support of the defendant in his labour dispute with the University of Ottawa as well as in his liable action, her communications with the defendant about this liable action, interaction between Ms. Gervais and Professor St. Lewis, that is that they knew each other before Professor St. Lewis did her evaluation, because Professor St. Lewis taught Ms. Gervais at the University of Ottawa Law School and then the others, access to SAC's data, request for access to the data and communications between Ms. Gervais and the defendant and then this September 30th, 2009 meeting which is the date that Ms. Gervais' recollection is as to when she and Professor St. Lewis met. So those are the categories, Your Honour, and I just wanted to briefly highlight the law. And if you have the factum I provided to you this morning, tab 11, Your Honour, is an extract from the Rothman's decision of Justice Purell [ph]. And if you go over to page 33 so the second page in from tab 11, the last bullet; the questions must relevant to and C is the credibility and reliability of the deponent's evidence.

And at the next tab, Your Honour, is a decision in Bruce v. McCory Premium, a decision of Master Brock [ph] and I'd ask you to look at paragraphs eight, 12 and 13. In paragraph eight - pardon?

M. RANCOURT: Vous avez pas nommé l'onglet....

MR. DEARDEN: It's after. Tab 13.

THE COURT: Paragraph 13?

MR. DEARDEN: No, I'm taking you to paragraph eight. I'm just telling Mr. Rancourt that it's tab 13 of the factum that he's looking for. It should be the McCory decision, Mr. Rancourt. So paragraph eight a decision of Master Haberman [ph] in Cobourn v. City of Toronto is highlighted, Your Honour, and you'll see right in the middle of that paragraph, the last sentence after the Wigidick [ph] decision,

"Cross-examination is also proper if it relates to credibility."

So right in the middle of paragraph eight; if it relates to credibility. So I've dealt with this in the factum itself, Your Honour, the right to cross-examine a deponent of an affidavit relating to reliability, independence and credibility. You'll see it at paragraphs 32 to 36 of my factum. I deal with the law and there's no doubt, in my respectful submission, Your Honour that a deponent can be tested on the independence of their evidence, the reliability of their evidence and the credibility of their evidence. And I've cited another decision, the Watson decision in paragraph 33 that a witness's credibility may be impeached by cross-examination showing or intended to show that a witness has a bias for or against the party to the litigation. And it's my submission that a number of the questions that were objected to go to the issue of

Ms. Gervais' bias and axe to grind against Professor St. Lewis and bias in favour of Mr. Rancourt. And not to belabour the point, Your Honour, as I've mentioned this morning but it's worth repeating, the egregiousness and the seriousness of what Mr. Rancourt's has accused Professor St. Lewis of doing with respect to this meeting date, by saying she's repeatedly made false sworn statements would in and of itself dictate that the evidence on which that accusation is based has to be tested for reliability, independence and credibility.

You'll recall, Your Honour, the Church of Scientology decision in the case of Hill v. Church of Scientology decision which is at tab number eight of the Book of Authorities, which are probably in the pile for the examination for discovery, just to make it easier I'll hand one up to the Court. In fact I'll hand one to Mr. Rancourt so he doesn't have to dig. It's worthy to keep this principle in mind Your Honour, in my respectful submission. Tab eight, paragraph 177, it's the Supreme Court of Canada decision of Hill v. Church of Scientology. Justice Cory makes these findings,

"It can't be forgotten that at the time the liable statement was made Casey Hill was a young lawyer in the Crown law office working in the litigation field. For all lawyers their reputation is of paramount importance. Clients depend on the integrity of lawyers as do colleagues. Judges rely upon commitments in the undertakings given to them by counsel. Our whole system in the administration of justice depends upon counsel's reputation for integrity.

5 Anything that leads to tarnishing of a professional reputation can be disastrous for a lawyer. It matters not that subsequent to the publication of liable Casey Hill received promotions, was elected a bencher and eventually appointed a trial judge in the general division of the Court of Ontario. As a lawyer, Hill would have no way of knowing what members of the public, colleagues, other lawyers and judges may have been affected by the dramatic presentation of the allegation that he had been instrumental in breaching an order of the Court and that he was guilty of criminal contempt."

10 Your Honour, the questions that I'll get into in the refusals chart in two seconds go to the issue of reliability, independence and credibility of Ms. Gervais' affidavit evidence and I want answers to those questions so that I can make a submission to the Court that no weight whatsoever should be given to her evidence in light of her previous interactions with Mr. Rancourt in a number of different ways.

20 And the Court can only, with respect to the relief he's seeking, based on this affidavit, the Court can only make a determination about the weight to be given to Ms. Gervais' conflicting recollection of this event that occurred four years ago by knowing how reliable, independent and credible she is as a witness which Mr. Rancourt is relying on to attain the relief he's seeking.

30 So Your Honour, subject to any questions you have, I'm content to then get into the refusals and

undertaking chart, the categories that I've told you about and I think you have a standalone...

THE COURT: Yes.

MR. DEARDEN: ...refusals chart, Your Honour and I'd ask you to turn to the first page of this refusals chart, which is heading A, Relationship between the defendant and Mireille Gervais. And I repeatedly said throughout this cross-examination that I was trying to establish the relationship that Mr. Rancourt and Ms. Gervais had but kept on getting 90 plus objections to it. I asked Ms. Gervais as you see in the first question,

"Did Mr. Rancourt teach you any courses?"

And there was an objection. Mr. Ran - the ninth question, Your Honour,

"Mr. Rancourt also said during his examination for discovery that the two of you were friends. Do you agree with that?"

He objects. The next page Your Honour,

"You've spoken out publicly Ms. Gervais about supporting Mr. Rancourt in his labour dispute with the University of Ottawa involving his dismissal from the University of Ottawa. She's on YouTube supporting it."

"Objection."

"Ms. Gervais I'm asking you if you held a press conference on March 17th which you can be viewed on YouTube where you call for support of Mr. Rancourt against his dismissal?"

"Objection."

"Ms. Gervais, during the March 2009 press conference you stated you worked very closely for the past two years with Mr. Rancourt?"

"Objection."

The next page Your Honour, number 15.

"What were you working on very closely with Mr. Rancourt?"

And then she co-hosts a radio program with Mr. Rancourt. We wanted her to confirm that and that was objected to. And I said - question 17,

"You became a co-host with Mr. Rancourt in December 2008; do you agree with that?"

And that was objected to.

"Ms. Gervais, you've communicated with Mr. Rancourt about your 2008 Annual Report before and after it was published correct? And I'm asking you produce all communications you've had with Mr. Rancourt dealing with your 2008 Annual Report that you say Joanne St. Lewis never met you about in November 2008. Will you do that?"

"Objection."

"I'm putting to you again, in terms of your relationship with Mr. Rancourt that you communicated with Mr. Rancourt about the article that you published on December 17th, 2008; correct?"

5 He objects. And that article dealt with Joanne St. Lewis' evaluation report and Mr. Rancourt did communicate with Ms. Gervais about that article before it was published. So I'm asking her to produce all communications you had with Mr. Rancourt regarding the December 17th, 2008 article which is exhibit two to the cross-examination. And then you'll see, Your Honour, I'm on page five of the refusals chart, question 168. So page 94, question....

10 THE COURT: The December 17th article, is that Ms. Gervais' report?

MR. DEARDEN: No, that's a....

15 THE COURT: That's an article....

MR. DEARDEN: ...blog.

THE COURT: A blog that she writes about Ms. St. Lewis' report or...

MR. DEARDEN: Yes.

20 THE COURT: ...is this just....

MR. DEARDEN: Yes. If you turn to tab four, Your Honour, of the plaintiff's motion record, it's there. So in my motion record, tab four.

25 THE COURT: So just the sequence, she files her - the Student Appeal Centre's report is filed in?

MR. DEARDEN: October 2008; she's finished writing it.

THE COURT: This is published?

MR. DEARDEN: It's published early in November.

30 THE COURT: November? Okay. And then....

MR. DEARDEN: And then Joanne's - Professor or President Roch asked Professor St. Lewis,

"Can you evaluate that report?"

And she does that around November 15, 2008.

THE COURT: So within two weeks-ish?

MR. DEARDEN: About that. Yes.

THE COURT: November 15th and then this report is on December - this is now a report....

MR. DEARDEN: No, this is an article she wrote.

THE COURT: About the....

MR. DEARDEN: This is a Student Appeal Centre article that Ms. Gervais wrote and you'll find it at tab four of the motion record.

THE COURT: So she is writing about her report presumably and Ms. St. Lewis' criticism or...

MR. DEARDEN: Correct.

THE COURT: ...study or analysis.

MR. DEARDEN: And you see Your Honour, it's titled SAC Annual Report based on 388 students' lived experience.

THE COURT: Right. That's her report.

MR. DEARDEN: That's an article.

THE COURT: Okay.

MR. DEARDEN: That's not the report, Your Honour, because the report, if you turn to tab seven, I've got the cover page of Ms. Gervais' Mistreatment of Students, Unfair Practices and Systemic Racism Report. So tab eight, that's Ms. Gervais' report that she finished writing in October of 2008. That's what Professor St. Lewis was asked to evaluate.

M. RANCOURT: Donc c'est l'onglet sept en fait.

MR. DEARDEN: Seven, sorry, thank you.

THE COURT: Yes.

MR. DEARDEN: Seven is the Gervais Annual Report.

So then Professor St. Lewis does her evaluation in a report that's dated November 15, 2008 and then if you look at tab four of the motion record, you have this December 17th, 2008 article written by Ms.

Gervais that deals with Professor St. Lewis' evaluation report and if you look - if you turn to the second page of that article, Your Honour?

THE COURT: Yes.

MR. DEARDEN: At page 56 of the Record, the third last paragraph that starts,

"The Student Appeal Centre denounces the University of Ottawa's tactics as an attempt to discredit it's student voices. Professor St. Lewis' accusation of the SAC report is methodologically flawed. Not only detracts from the issues of racism and injustice on campus but also silences the values as well student perspective on matters of appeals and the broader student/university relationship. The Student Appeal Centre continues to be a witness to racism and contempt, contempt for students."

So that is a question I wanted to ask her about on page 94, that you see on page five of the Refusal Chart. I want her to produce all communications she had with Mr. Rancourt, what regarding that article she wrote and it's exhibit two to the cross-examination.

THE COURT: Is that relevant whether she had communications about that article?

MR. DEARDEN: It shows that they're working together...

THE COURT: Right.

MR. DEARDEN: ...to criticize Professor St. Lewis.

THE COURT: Okay.

MR. DEARDEN: Totally partisan is my submission and
you remember the case I cited to you, Your Honour,
that you can impeach the credibility of a witness if
they show bias for a particular party to the
litigation. And that's what I wish to do in having
these questions answered and these documents
produced.

And Your Honour the - if you turn to tab five of the
motion record, there's another article written by
Ms. Gervais on February 11, 2011 and this one is
Freedom of Information Documents Show Joanne St.
Lewis Lack of Independence from the Central
Administration. And that is the day, Your Honour,
and shortly after this February 11th, 2011 article
was published Mr. Rancourt published his House Negro
articles about Professor St. Lewis. But there is
communication, this is the article, Your Honour, the
one that you have at tab five, this is the one that
made Mr. Rancourt cry for joy. And Mr. Rancourt
actually had input on how the title would read in
this article. He told Ms. Gervais,

"You should change the word "prove" to "show"."

So she initially had,

"...prove Joanne St. Lewis Lack of Independence
from the Central Administration."

5 M. RANCOURT: Ça c'est une fausse donnée - monsieur Dearden sait que c'est faux. Il y a des - il y a du témoignage assermenté - c'est absolument faux ce que monsieur Dearden vient d'affirmer, parce qu'il sait très bien que le courriel en question où j'ai fait une suggestion était pour faire une suggestion sur un courriel...

MR. DEARDEN: Your Honour he has...

10 M. RANCOURT: ...qui devait être envoyé....

MR. DEARDEN: He has his right....

M. RANCOURT: ...entre monsieur....

LE TRIBUNAL: Just a second, Mr....

MR. DEARDEN: No.

LE TRIBUNAL: Monsieur Rancourt....

15 MR. DEARDEN: No.

M. RANCOURT: Faites une note - faites une note.

M. RANCOURT: Oui.

LE TRIBUNAL: Faire un objection....

20 M. RANCOURT: Mais quand un officier de la Cour dit quelque chose qu'il sait n'est pas vrai, je vais m'objecter.

MR. DEARDEN: No, it's true.

M. RANCOURT: Je vais m'objecter.

25 MR. DEARDEN: He told her to change the word "prove", to "show."

M. RANCOURT: Dans un courriel.

MR. DEARDEN: Yes.

30 M. RANCOURT: Pas dans le rapport. Dans un courriel qui était destiné à être envoyé à monsieur - au président, et vous savez très bien ça, et vous avez posé ces questions-là et vous avez eu des réponses - et les données sur papier le montrent, vous êtes en

train de mal diriger la Cour. C'est faux ce que vous dites et vous le savez très bien.

MR. DEARDEN: Your Honour, it's been said in an email to Ms. Gervais,

"Change the word "prove" to "show"."

And it turned up in this article.

M. RANCOURT: C'était à propos d'un courriel. Il fallait changer ce mot dans un courriel, pas dans le rapport. C'est faux ce que vous dites et vous le savez. Vous avez déjà posé la question, vous avez eu une réponse.

LE TRIBUNAL: Monsieur Rancourt. Monsieur Rancourt.

M. RANCOURT: Et les documents le montrent.

LE TRIBUNAL: Monsieur Rancourt. Monsieur Rancourt.

M. RANCOURT: C'est complètement faux.

LE TRIBUNAL: Monsieur Rancourt, c'est des représentations, c'est pas une preuve, vous avez votre - moi j'ai pas décidé cette question, ce que lui prétend - c'est des prétentions, des prétentions....

M. RANCOURT: Monsieur Dearden est un officier de la Cour.

LE TRIBUNAL: Non, non, c'est pas....

M. RANCOURT: Et il a eu les informations...

LE TRIBUNAL: Non, non. Baisse la voix.

M. RANCOURT: ...il a les documents.

LE TRIBUNAL: Baisse la voix. Baisse la voix.

M. RANCOURT: Excusez-moi, mais c'est....

LE TRIBUNAL: On a la journée à passer ensemble.

M. RANCOURT: Excusez-moi, Monsieur le Juge, mais....

5 LE TRIBUNAL: Donc lui il a des perspectives - sur certaines choses - vous avez un autre. Vous aurez votre chance d'expliquer comment c'est faux, c'est pas le cas, monsieur Dearden lui il prétend que c'est vrai. Bon. Moi là...

M. RANCOURT: Oui.

10 LE TRIBUNAL: ...je suis pas pour faire une analyse - vraiment - mais c'est la connexion, selon maître Dearden, de ces questions.

M. RANCOURT: C'est une donnée simple et elle est fausse.

LE TRIBUNAL: Okay.

15 MR. DEARDEN: It's incredible, Your Honour. I'm so tired of being accused of saying false things, of altering documents which is something you're going to hear about later. It's just incredible that it's disturbing. He told Ms. Gervais in an email,

20 "Change the word "prove" to "show"."

25 And low and behold, doesn't the title in this article say prove to show. She's changed - it says "show". All I'm saying, Your Honour, is he had input in what Ms. Gervais was writing about the evaluation report of Ms. St. Lewis and I'm asking him to produce those communications at question 167, page 94 that you see on page five of the refusals chart.

30 And I asked for the same thing on this February 11th article that you see at tab five. So the article she's written about the evaluation report, he's had

communications with her about that and I want them to produce to show the partisanship, the lack of independence that Ms. Gervais has in the affidavit that she has put before the Court.

At tab nine, Your Honour, of the motion record, we have the email. So I'm looking at question 178, 179. And this is exhibit seven to the cross-examination. You see, Your Honour, before you see Mr. Rancourt crying with joy. Down below there's a February 11th, 2011 4:39 p.m. email from Ms. Gervais to Mr. Rancourt.

THE COURT: Yes.

MR. DEARDEN: That has the links to that February 11th article that I just showed you. And Mr. Rancourt's response to that at 6:36 p.m. is,

"I'm crying with joy. That is the most best Xmas present I ever got. I love you. Denis."

And about four minutes after that, Your Honour, Mr. Rancourt published his House Negro article on his U of O watch blog, at least that's the time that it says on his actual blog. Shortly after he fires off this email. Mr. Rancourt, can you please sit down.

M. RANCOURT: Je dois m'objecter, parce que monsieur....

LE TRIBUNAL: Monsieur Rancourt.

M. RANCOURT: C'est la deuxième fois que monsieur Dearden mé-dirige la Cour. Il sait très bien que le temps de ce blog, et je lui ai dit sous serment qu'il y avait une erreur dans le temps, une erreur

évidente, il - il sait très bien, il a même qualifié sa réponse que c'est faux et il s'en sert de façon incorrecte.

5 MR. DEARDEN: Your Honour, I would ask the Court to please take into account the conduct of this defendant. I know he's an anarchist and I know he doesn't like playing by rules but the accusations he's making about me as counsel for Professor St. Lewis....

10 LE TRIBUNAL: Ça n'aide pas de faire des critiques, soit de monsieur - maître Dearden contre vous - ni - et aussi par vous contre maître Dearden, franchement, moi c'est des questions je veux - le litige s'avance, la manière la plus efficace possible, les échanges entre procureurs - vous êtes - vous vous représentez vous-même, ça m'aide pas franchement. C'est une - ça me dirige dans une direction qui est pas utile, donc j'aimerais que ce soit civil entre vous et maître Dear - respectueux

15

20 entre vous deux.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça s'applique aux deux.

M. RANCOURT: Je vais - oui.

LE TRIBUNAL: Il faut qu'on garde ce ton-là parce que moi je vais être avec vous autres peut-être pour - assez longtemps, puis pendant....

25

M. RANCOURT: Oui, Monsieur le Juge....

LE TRIBUNAL: Donc il faut que ce soit efficace, respectueux.

30 M. RANCOURT: Je suis....

LE TRIBUNAL: Ça c'est des normes, des...

M. RANCOURT: Oui.

LE TRIBUNAL: ...minimes, vous êtes pas d'accord, vous êtes - vous avez des positions contraire, ça c'est normal dans un...

M. RANCOURT: Oui.

LE TRIBUNAL: ...dans une cause.

M. RANCOURT: Monsieur le Juge, je....

LE TRIBUNAL: J'insiste que ce soit respectueux.

M. RANCOURT: Absolument.

LE TRIBUNAL: Des deux parties.

M. RANCOURT: Monsieur le Juge, la seule inquiétude - j'ai été - j'ai été très outré par ce que j'estime est mé-diriger la Cour et j'aimerais avoir la permission de faire des soumissions pour montrer...

LE TRIBUNAL: Non. Non, non.

M. RANCOURT: ...que les deux choses que monsieur Dearden...

LE TRIBUNAL: Non. Non, non.

M. RANCOURT: ...a dit sont fusses.

LE TRIBUNAL: Vous aurez - faites des notes. Faites des notes.

M. RANCOURT: Non, des soumissions parce que ça se rattache...

LE TRIBUNAL: Non.

M. RANCOURT: ...à des documents.

LE TRIBUNAL: Non.

M. RANCOURT: C'est des documents.

LE TRIBUNAL: Non.

M. RANCOURT: Y'a des preuves.

LE TRIBUNAL: Non. Vous aurez votre chance, je vais vous entendre, mais à votre tour. Si non on finira jamais. Objection. Okay, on va continuer parce qu'on approche l'heure du diner. Je ne sais pas si

- vous êtes pas prêt à complé - à être - you're not nearly completed?

MR. DEARDEN: No, I'm....

THE COURT: I had this thought that we might not be able to - notwithstanding our good intentions of keeping our times but anyway, let's - we'll use another 10 minutes if we can. I didn't mean lose, I meant use.

MR. DEARDEN: That's the way I took it, Your Honour.

THE COURT: That would potentially be a....

MR. DEARDEN: The remainder of my argument...

THE COURT: Yes.

MR. DEARDEN: ...is simply through this chart and illustrating to you the questions....

THE COURT: I have gone through the chart. I have gone through the chart, I'm not sure how the most effective way of - do we deal with the headings of topics?

MR. DEARDEN: Well, let me finish...

THE COURT: Or go question by question.

MR. DEARDEN: ...if I finish A, heading A which is the relationship between the defendant and Ms.

Gervais, it's all the communications that they exchange with each other about Professor St. Lewis and so that really is that category, Your Honour.

The only notable - if you turn to page eight, I did serve a notice of examination of what I wanted Ms. Gervais to produce and Mr. Rancourt. So that's at tab eight. Some of it covers off - tab 10 rather, Your Honour, the notice of examination that I served on Ms. Gervais for this cross-examination. There are five categories of record, some of which I've

5 touched on already. But Mr. Rancourt had a letter prepared that you'll see at tab 11, an August 16th where he objected to everything I asked her to produce in that notice of examination so we didn't bother fighting over it. I just said,

"I'll bring a refusals motion."

10 So that's the only I guess unique standalone question that's in category A.

THE COURT: Well, essentially this is the same thing. Emails, communications between them, what period are you seeking emails - all communications really? Is there a time period?

15 MR. DEARDEN: Well, it's really only about you know, Professor St. Lewis and the evaluation report so it's - you know, there's the 2008 period where there's that December 17th article that she wrote and of course there's the period before that when she's preparing her own report.

20 THE COURT: But they may have extensive communications about the labour dispute. That's not relevant to - really relevant to this issue, is it? Every communication they may have? I don't know.

25 MR. DEARDEN: No, I'm not asking for that Your Honour....

30 THE COURT: Then we get on to another sidebar off into - this has to be relevant to her relationship with Mr. Rancourt, they're good friends, she's a supporter. Well, that's one situation. Or she's purely a stranger? Well, I don't know.

MR. DEARDEN: But all I....

THE COURT: That's another situation and maybe it's relevant, maybe it's not that relevant. I don't know.

MR. DEARDEN: On your labour question, Your Honour, the labour dispute question, the only answer I wanted was at page two of the refusals chart, page six, question 10 where I said,

"You've spoken out publicly Ms. Gervais supporting Mr. Rancourt...."

THE COURT: Supports him but all the details of any letters or facts...

MR. DEARDEN: No, I'm not asking for that.

THE COURT: ...I mean all that's - that's going to be way too much.

MR. DEARDEN: I'm not asking for that, Your Honour, but I do want her to confirm the questions I asked about the support that she reached out to people to give to Mr. Rancourt.

THE COURT: Okay.

MR. DEARDEN: On the labour dispute that's all I want. I do want all communications though that the two of them exchanged that have anything to do with Professor St. Lewis' evaluation report.

THE COURT: Okay.

MR. DEARDEN: And if we could just finish heading B, Your Honour, before the lunch break, I asked - and this is starting at page nine of the chart, I asked Ms. Gervais,

"Did you write the first draft of this? How many drafts of this affidavit were written? I

want you to produce all drafts of this affidavit and I want you to produce all communications that you had with Mr. Rancourt about the contents of the affidavit and exhibit A which is an email of September 23, 2009 from Professor St. Lewis to Ms. Gervais."

I'm asking for all of that information because in my respectful submission, Mr. Rancourt would have had input in how that affidavit was written and I want to see the drafts and I want to see what communications they exchanged with each other. And that clearly goes to the credibility and independence of what is in that affidavit.

The other questions in that category Your Honour, if you go to page 10, I actually went to paragraph four of her affidavit and asked her why she's supporting - that she swore the affidavit in support of Mr. Rancourt's refusals in productions motion and I asked her why and he wouldn't let her answer that question. And if you turn to page 11, Your Honour, the refusal at page 20, so you want question 35, I get an answer from Ms. Gervais that there was a motion before the Court,

"Witnesses in the Rancourt matter did not provide all the documents or the information that they should have provided in law."

And I asked which witnesses. I mean it was something that came directly out of an answer the witness was giving, one of the rare answers that witness gave and I got met with an objection.

M. RANCOURT: Quelle question s'il vous plaît?

MR. DEARDEN: Thirty-five.

THE COURT: Thirty-five.

MR. DEARDEN: And then 36, question 36 was,

5 "What did Mr. Rancourt ask you to do when he had
 brought to your attention that your support was
 needed for the refusals in production motion?"

10 That was objected to? And we can deal with actually
 category C pretty quickly too Your Honour because
 again it deals with that December 17th, 2008 article
 that Ms. Gervais wrote. You see at page 13 Your
 Honour, heading C, Articles Written by Mireille
 Gervais about Professor St. Lewis' evaluation of the
15 SAC report? I've already covered that ground with
 that particular article. And indeed, while I'm at
 it, I can get D done pretty quickly too because that
 deals with just asking Ms. Gervais if prior to
 swearing the affidavit she was critical of Professor
20 St. Lewis and/or her evaluation report. And those
 questions were objected to. That all goes to
 partisanship, lack of independence, axe to grind.

25 And the labour grievance question came up again at
 page 16 Your Honour under the heading, Mireille
 Gervais' Support of the defendant. It's question
 45. I just asked,

30 "Do you agree or disagree with the statement
 that you're a supporter of Mr. Rancourt in his
 labour grievance against the University of
 Ottawa?"

And I'm putting it to her in question 46 that,

"You are a supporter of Mr. Rancourt in this liable action?"

5 So Your Honour if you want to break for lunch now?

10 THE COURT: It's probably a good time. I think that's a good way to proceed, dealing with the headings. Basically the questions flow from that and I will ask Mr. - Monsieur Rancourt, je vais poser la question, à la fin, est-ce que vous êtes d'accord avec les critères établi par les causes selon maître Dearden que les critères c'est - bon, pertinence mais aussi sur un contre-interrogatoire sur un affidavit, c'est des questions de partialité ou crédibilité, est-ce que - une dépendance et - bon, les trois....

15 MR. DEARDEN: Reliability.

20 THE COURT: Reliability. Fiabilité. Est-ce que vous êtes d'accord que ce sont des critères pour faire un contre-interrogatoire...

M. RANCOURT: Alors...

LE TRIBUNAL: ...sur un affidavit?

M. RANCOURT: ...Monsieur le Juge, ça fait partie....

25 LE TRIBUNAL: Ou est-ce que vous proposez un autre test de quelque sorte?

M. RANCOURT: Vous voulez - si je comprends bien, vous aimeriez, avant le break du lunch, vous aimeriez avoir la direction dans laquelle je vais aller avec mon - avec mon argument?

30 LE TRIBUNAL: Non. Non, non, c'est une question que je vais vous poser.

M. RANCOURT: Oui.

LE TRIBUNAL: Est-ce qu'on est d'accord avec la - les critères ou le test que je dois appliquer aux questions?

5 M. RANCOURT: Non. Je ne suis pas d'accord.

LE TRIBUNAL: Okay. Donc vous pensez - vous me donnez cet....

M. RANCOURT: Pardon?

10 LE TRIBUNAL: Vous pouvez me donner cette réponse dès qu'on commence, mais c'était une question...

M. RANCOURT: Si je dois répondre oui...

LE TRIBUNAL: Parce que ça c'est l'analyse....

M. RANCOURT: ...ou non...

LE TRIBUNAL: Oui.

15 M. RANCOURT: ...la réponse c'est non.

LE TRIBUNAL: C'est non. C'est pas les bonnes....

M. RANCOURT: Mais je vais le qualifier évidemment.

LE TRIBUNAL: Okay.

M. RANCOURT: Et je vais citer des autorités.

20 LE TRIBUNAL: D'autres causes. Okay.

M. RANCOURT: Oui.

25 LE TRIBUNAL: Donc c'est bien. Je pouvais comprendre - parce que si c'est admis, donc moi j'ai certainement appliqué les critères établi par d'autres causes.

M. RANCOURT: Oui.

LE TRIBUNAL: S'il faut que je décide que c'est un autre critère - bon - je vais vous entendre....

M. RANCOURT: Exactement.

30 LE TRIBUNAL: Okay?

M. RANCOURT: Oui.

LE TRIBUNAL: C'est bien - we'll come back at two o'clock. Shall we come back at two?

MR. DEARDEN: Thank you, Your Honour.

5

R E C E S S

[1:01 p.m.]

U P O N R E S U M I N G

[2:06 p.m.]

THE COURT: Mr. Dearden?

MR. DEARDEN: Thank you, Your Honour.

10

SUBMISSIONS BY MR. DEARDEN:

We were at category F on page 17. That's page 17 of the refusals chart. Do you have that, Your Honour?

THE COURT: Yes, I have that.

15

MR. DEARDEN: So Your Honour, this category of questions goes to the bias for Mr. Rancourt, a party to this litigation that Ms. Gervais has. So you will see that I've asked questions about what communications they had with Pleadings, the Champerty abuse of Process Motion, affidavits of documents, the discoveries and this was one point where I said to Mr. Rancourt,

20

"I'm trying to establish the relationship you had with this witness prior to swearing this affidavit which is challenging the veracity of the evidence given by Professor St. Lewis during her examination for discovery."

25

But I got objected to on everything, pleadings, motions, the defence, all of it that you see in category F. And in particular the one that I will draw your attention to is at page 20. This was a

30

November 3rd, 2011 email that Ms. Gervais sent to Mr. Rancourt about this action and I was asking,

5 "What would prompt you in November 2011 to provide this information to Mr. Rancourt to assist him in this defence of this liable action?"

But that was objected to. So that's that category of questions, Your Honour.

10 The next category is internet action between Mireille Gervais and Professor St. Lewis and this really goes to the - how well they knew each other because - and I'll ask you to turn this up, Your Honour, at tab three of the motion record, if you could turn to it. This is the affidavit of Mireille Gervais and she has an exhibit A that you'll find at 15 page 53 of the motion record. Now, remember, Your Honour, Professor St. Lewis taught Mireille Gervais a law school course in the fall of 2007 so they knew each other. This email that you see at page 53, 20 this September 23, 2009 email has the interesting opening line; this is from Joanne St. Lewis to Mireille Gervais,

25 "I have been remiss in not introducing myself before this."

And this is what they're relying on as evidence to say,

30

"Well, they never met before. They didn't meet in November 2008; this is the first time they met."

5 So my questions here, I mean just counterintuitive on its face, they knew - of course they knew each other, she taught her. So I'm exploring the depth of interaction that Professor St. Lewis had with the student, Ms. Gervais, in this course where clearly they knew each other. And so I'm asking questions like,

10 "Well, how big was the class? What was your interaction with Professor St. Lewis in that class? You had to do papers so you discuss with your prof papers."

15 So it's not just someone sitting silently up in the last row of the 300 seat auditorium theatre that never speaks to the prof and that's why I'm asking these questions and question 67 I'm asking,

20 "Did you have a good student/professor relationship?"

25 Because she was seeking feedback on career and marks and I want to explore that. It's just not something where of course when you look at that September 23rd email that they never met each other before. So that's the purpose of asking this question. The depth of the relationship before Professor St. Lewis issued her November 2008 report. So that's that category, Your Honour.

Now, I'll move to the next one unless you have some questions on that. So now we're on category H, there's a gap in time between October 2008 and November 12th, 2008 and in terms of when the report's written, that's Ms. Gervais' Student Appeal Centre Report and when she releases it publicly. And what I'm trying to get at is her awareness that the University of Ottawa was going to provide a response. And indeed, Your Honour that report did have a last page that was reserved for the response of the University of Ottawa and that response Your Honour is Joanne St. Lewis' evaluation report. That's the response. Okay? So I want to find out,

"What went on from the time you offered the University of Ottawa a response?"

Which they had asked Joanne St. Lewis to do and produce communications in that time period all going to you know, this issue of was she right on her recollection of meeting or not meeting with Joanne St. Lewis before Professor St. Lewis issued her report on November 15th, 2008.

The next category, Your Honour, is I, Mireille Gervais' expression of concern about Professor St. Lewis not meeting with her prior to releasing the report.

M. RANCOURT: À quelle page, s'il vous plaît?

MR. DEARDEN: It will be at page 30 and so it's issue I, category I. And Your Honour, to my knowledge Ms. Gervais never expressed any concern

5 that Joanne St. Lewis didn't meet her in November
2008. So this really goes to the accuracy of her
recollection that if it was such a big deal that
Professor St. Lewis didn't meet her then why did she
never ever write anything that would express a
concern? So this really - these questions here
asking her you know, whether she ever expressed a
concern in any kind of document, in any emails,
anything. So it's all these questions. Her failure
10 to express a concern really goes to supporting the
recollection that Professor St. Lewis has that they
did meet. It certainly would go to the issue of the
weight to be given to the affidavit. So those are a
serious of questions you'll find at pages 30 through
15 to 33.

Page 34 is category J, which is the issue of whether
Ms. Gervais would give access to the data that she
relied on to produce her report to the university so
20 that they could evaluate what was going on. And I
asked, as you see....

THE COURT: So how is that relevant to relationship
between Mr. Rancourt and Ms. Gervais?

MR. DEARDEN: Yes, but there's another - the
25 specific I'm going to take you to in this category
is exhibit number six of the cross-examination, Your
Honour.

M. RANCOURT: On est à quelle question?

LE TRIBUNAL: Question 113.

30 M. RANCOURT: Merci.

LE TRIBUNAL: Page 34.

5 MR. DEARDEN: So Your Honour if you look at - I'd ask you please to turn up tab eight of the motion record. This is exhibit six to the cross-examination of Ms. Gervais. And I asked her a question,

"Did anyone at the University of Ottawa ask you for access to the data you relied on in the report?"

10 And that was objected to. Exhibit six, if you look at the bottom; so Your Honour you should be looking at a document that has a handwriting 86 in the top right hand corner.

THE COURT: Yes.

15 MR. DEARDEN: There's an email from Alan Roch at the bottom to a number of people such as Robert Major, November the 12th, 2008 at 10:53. And it says,

20 "We should repeat our request for the detailed information to which she did not respond. We should also...."

25 Now, if you turn the page Your Honour, you don't get the rest of that email. What you're looking at in tab eight is a selective severing of documents received by Ms. Gervais to the freedom of information request she made to the university. And these are the documents she linked up in the February 11th article that we dealt with earlier in the day, the February 11th, 2011 article she wrote and it's also what Mr. Rancourt's House Negro article deals with. So we got an incomplete freedom of information package that Ms. Gervais has. She

30

has all the documents and you'll see that Mr. Roch is explaining or saying to his group,

5 "We need to repeat our request for detailed information to which she did not respond."

10 And we don't know the rest of the story there and nor do we know the rest of the emails that - or documents that were given to Ms. Gervais in response to this access to information request or freedom of information act request rather.

15 Paragraph 25 of the statement of claim, Your Honour, Professor St. Lewis pleads that she requested records and data necessary to conduct the evaluation and that the Student Appeal Centre did not provide Professor St. Lewis any data. And at paragraph seven of the reply states that the plaintiff attempted to obtain information from the Student Appeal Centre, the plaintiff requested that that data be provided to her that supported the SAC report and the plaintiff met with Student Appeal Centre representatives. So that's in the pleadings. And that's what Mr. Roch's incomplete email was saying,

25 "We are requesting detailed information. She hasn't responded. We should also...."

30 And we don't have the rest of the story and I submit to you, Your Honour, that when Ms. Gervais says in her affidavit and if you can look at paragraph - go

back to tab three of the motion record, paragraph 10 of this affidavit, she says,

"I never had any...."

And this is right at the bottom of the page 50 of the record, paragraph 10 of the affidavit,

"I've never had any communication by any means, in person or otherwise with Joanne St. Lewis about the 2008 Student Appeal Centre report and/or her 2008 evaluation of the Student Appeal Centre report until Joanne St. Lewis emailed me on September 23rd, 2009 at 9:24 p.m."

Mr. Roch's email, President Roch's email refers to a request for detailed information to which she did not respond. So contrary to paragraph 10 of the Gervais affidavit, Your Honour, there was communication with Ms. Gervais prior to the finalization of Joanne's report, Professor St. Lewis' report and we need the complete picture. What's the rest of that email say from Mr. Roch? What other information in that freedom of information request would reveal whether the two of them met prior to November 15, 2008? Very important information to be produced and I asked her to produce that Your Honour, you'll see at page 38 of the chart, it's questions 131 and 132. I say,

"I wanted you to produce the entire FIPA response...."

That's Freedom of Information Protection and Privacy Act, you'll see on page 38 Your Honour, FIPA, that's

Freedom of Information Protection and Privacy Act,
the Ontario legislation. So I want the entire
response and I want the request. I want to see what
she requested that resulted in getting, amongst
other things, the information we do see at exhibit
six.

The next category, Your Honour, unless you have any
questions on the previous category I'll let you....
THE COURT: That's fine.

MR. DEARDEN: Okay, category K is directed at
communications between Ms. Gervais and the defendant
where I'm asking,

"Why are swearing this affidavit? Like how did
it come to your attention, this September 23,
2009 email? Like, it came out of the blue?"

No, there had to be, Your Honour, in my respectful
submission communication with Mr. Rancourt in
preparing this affidavit that they were going to -
how they were going to deal with the September 23,
2009 email that we find at exhibit A of the
affidavit. But this I do know Your Honour, that
exhibit wasn't in Mr. Rancourt's affidavit of
documents. So how did it come about? They clearly
were working together and talking about this liable
action and that goes to the issue of bias in favour
of Mr. Rancourt and certainly partisan in favour of
him and against Professor St. Lewis.

M. RANCOURT: Excusez-moi, j'ai mal compris, quel
exhibit n'était pas dans mon affidavit document?

MR. DEARDEN: September 23, 2009 email at exhibit A.

M. RANCOURT: À quel onglet cet exhibit?

MR. DEARDEN: It's exhibit A to the affidavit you put in for Mireille Gervais.

M. RANCOURT: Mais il n'est pas ici devant nous?

MR. DEARDEN: It's tab three of the motion record.

MR. RANCOURT: Okay.

MR. DEARDEN: You've got your....

M. RANCOURT: Excusez-moi.

MR. DEARDEN: I'm on the clock. Thanks. Okay, where was - did I finish with that? Communications with - yes, so that's category K, Your Honour.

THE COURT: Yes.

MR. DEARDEN: So category L, September 30th, 2009 meeting with Mireille Gervais and Joanne St. Lewis. I'm asking questions there about what was discussed at the meeting which clearly would go - which is dealt with at paragraph 12 of Mireille Gervais' affidavit and this goes to Ms. Gervais' recollection of when she met Professor St. Lewis. And in particular you'll see on page 43, Your Honour, I've asked at question 163,

"Do you have any other records that might shed some light on what was discussed at this September 30th, 2009 meeting with Professor St. Lewis?"

Because the only record produced so far is this September 23 email. I'm asking for other records that would support her recollection that that's when the meeting occurred and there was an objection. So Your Honour, those are my submissions.

I'm requesting that you order Ms. Gervais to re-attend for cross-examination to answer the questions she's refused to answer and I added in the notice, Your Honour that if Mr. Rancourt objects, assuming that there's one or more questions you order re-attendance on, that if Mr. Rancourt objects to the answer or to the question rather, that the answer to save time and not waste money, the answer be put on the record and let the Court rule later on whether that was an improper question or not. But not to have us go back and me face the 90 plus objections that I faced by Mr. Rancourt last time, have to come back before you and then you know, someday get an answer I would hope but - because there will be obviously follow up questions to answers that I actually am given if you do order that one or more of these questions be answered. So I'm asking that she re-attend but also that we go through the process that she put the answer - if there's an objection she puts the answer on the record but subject to the Court ruling whether it was a proper question or not.

And lastly, again Your Honour I'd ask that we be allowed to make submissions to you on costs and 10 days and Mr. Rancourt make submissions on costs, 10 day. Probably you'll need a reply on this one. So those are my submissions Your Honour and I met my one hour, I think.

THE COURT: Mr. Rancourt?

M. RANCOURT: Merci.

MR. DEARDEN: Mr. Rancourt, do you want this?

M. RANCOURT: Oui. Merci, Monsieur le Juge. On attire mon attention à un document, c'est quoi?

MR. DEARDEN: No, do you want this?

M. RANCOURT: Ça peut être utile, oui, merci.

REPRESENTATIONS PAR M. RANCOURT:

Je ne sais pas - en tout cas. Bon. Je prends juste quelques secondes pour organiser mes premières pensées. Okay. Je pense que je suis prêt, Monsieur le Juge.

Monsieur le Juge, juste pour mettre les choses en contexte, la motion actuelle est une motion de refus qu'apporté la plaignante par rapport au refus de madame Gervais. On est clair sur ce point. Et cette motion est entendue aujourd'hui et - les documents de la Cour, c'est-à-dire l'avis de motion que je devais mettre en réponse était due le 24 octobre, et le 24 octobre j'ai produit un factum et j'ai produit un avis de motion avec affidavits si je ne me trompe pas. Oui, avec affidavit détaillé et plein de documents. Par contre, monsieur Dearden aujourd'hui - et là je - je soulève une question de justice procédurale profonde, monsieur Dearden aujourd'hui a utilisé un - un factum que j'ai reçu hier, il y a moins de 24 heures. Et dans ce factum il y avait des arguments légaux détaillés que je n'ai jamais vu et il a utilisé un livre d'autorités qu'il a aussi pas soumis avec son avis de motion, des autorités que je n'ai pas eu la chance

5 d'étudier, je ne savais pas du tout les arguments
légaux que monsieur Dearden allait utiliser.
Monsieur Dearden était libre de soumettre son factum
et son livre d'autorités en même temps qu'il a
soumis son avis de motion, mais il a choisi de le
soumettre à la dernière minute, après, et j'insiste
là-dessus, Monsieur le Juge, après que j'ai servi
mon avis de réponse et mon factum le 24 octobre.
J'ai reçu ce factum de monsieur Dearden il y a moins
10 de 24 heures.

LE TRIBUNAL: Ça c'est le factum en réplique à
monsieur Hameed?

M. RANCOURT: Oui.

15 LE TRIBUNAL: Monsieur Hameed avait - j'avais
accordé...

M. RANCOURT: Oui, mais...

LE TRIBUNAL: ...quatre jours de...

M. RANCOURT: ...je suis obligé....

LE TRIBUNAL: ...fournir un factum...

20 M. RANCOURT: Ce factum...

LE TRIBUNAL: ...il a répondu, oui.

M. RANCOURT: ...de réplique - ce factum de réplique,
Monsieur le Juge, contient les arguments légaux
détaillés que monsieur Dearden utilise aujourd'hui
25 dans la motion actuelle devant vous en ce moment; la
deuxième motion d'aujourd'hui. C'est ces arguments
légaux-là qu'il a utilisés et auxquels il a fait
référence sans cesse, et je me suis aussi opposé
quand qu'il a fait référence aux mêmes arguments
30 dans la première motion parce que je disais qu'il
argumentait cette motion-ci, ce qui était le cas,
mais mon point central c'est que je suis devant une

position où je n'ai appris les arguments légaux de monsieur Dearden dans la motion actuelle, en ce moment, il y a moins de 24 heures, et sans qu'on me dise « Je vais utiliser ce factum dans la deuxième motion aussi. » Et ça c'est une question de justice fondamentale, Monsieur le Juge. J'ai - je suis vraiment mal pris avec cette situation-là, c'est quand même des arguments - je suis auto-représenté, c'est des arguments légaux très compliqués, c'est des autorités que je n'ai pas eu la chance d'étudier pour voir leur contexte, pour voir si vraiment elles s'appliquent à - de la façon que monsieur Dearden veut les appliquer. Et je - je - je soumetts devant la Cour qu'il y a une injustice fondamentale à mon égard et je demande donc que cette motion-ci soit ajournée pour que - Monsieur le Juge, on ne perde pas la journée, qu'on aille plutôt vers la motion qui n'est pas impliquée par ce problème et qu'on utilise le reste de la journée sur cette autre motion qui est la motion de refus de monsieur Dearden dans l'action principale, comme ça on pourrait résoudre ce problème et j'aurais le temps d'étudier ce que - les arguments que monsieur Dearden a mis de l'avant.

LE TRIBUNAL: Mais peut-être avant qu'on procède - donc je devrais - I should hear from you, Mr. Dearden, a request for an adjournment because of the factum filed on the Mr. Hameed....

MR. DEARDEN: Your Honour, I'm completely opposed to any adjournment. It's yet another example of his delay tactics. Throughout my cross-examination of Ms. Gervais on August the 16th I kept on telling him

5 that the purpose of the question was because she was
partisan or she was bias and you've heard me read
those passages. I haven't read them all, Your
Honour, but throughout it I kept telling him why I
was asking those questions. He was fully aware of
what I'll say a trite proposition which a witness on
cross-examination can be tested on credibility,
independence and reliability. It's trite and Mr.
Hameed was here this morning and he didn't disagree
10 with it and he's acting for Ms. Gervais. He didn't
disagree with that because he couldn't and he knew
it. And of course and I'm not suggesting he would
have. It was - he was quite candid in the
concessions that he made this morning about what the
law was. And that's a good thing. So there's
absolutely no reason other than my friend trying -
or Mr. Rancourt rather, trying to delay yet again
these proceedings so that we cannot get to a trial
and to give Professor St. Lewis an opportunity to
20 restore her reputation from his egregious defamatory
publications about her.

M. RANCOURT: Alors Monsieur le Juge, la raison que
monsieur - la façon j'ai compris ce que monsieur
Hameed a dit ce matin c'est qu'il n'a pas adressé
25 ses questions parce que c'était pas pertinent, la
seule motion qu'il traitait c'était par rapport à
son intervention dans la motion. Alors la
caractérisation de...

LE TRIBUNAL: Okay, mais vous avez....

30 M. RANCOURT: ...monsieur Dearden n'est pas tout à
fait correct, mais....

LE TRIBUNAL: Okay, mais Monsieur - Monsieur Rancourt, vous avez eu une copie des refusals and undertaking chart, la charte - vous avez eu ce document-là?

5

M. RANCOURT: Absolument.

LE TRIBUNAL: Puis vous avez eu la....

M. RANCOURT: Ce document a été servi avec l'avis de motion.

LE TRIBUNAL: Motion, depuis longtemps.

10

M. RANCOURT: Oui.

LE TRIBUNAL: Et puis aussi - mais vous avez pas eu ce factum ici?

M. RANCOURT: Absolument pas.

LE TRIBUNAL: Okay.

15

M. RANCOURT: Je l'ai reçu il y a moins de 24 heures.

LE TRIBUNAL: Okay.

M. RANCOURT: Le factum qu'utilise monsieur Dearden, je l'ai reçu y'a moins de 24 heures.

LE TRIBUNAL: Okay.

20

M. RANCOURT: Sans qu'on me dise qu'on allait utiliser dans la motion actuelle qui est devant vous en ce moment.

LE TRIBUNAL: Okay. Qu'est-ce que je vais faire - j'accorderai pas votre demande pour un ajournement, mais qu'est-ce que je vais faire - je vais vous donner un opportunité de répondre par écrit d'ici 10 jours au contenu du factum sur la question du critère, vraiment c'est les critères d'appliquer dans cette sorte de motion, c'est ça que vous avez pas eu la chance de regarder. Donc je vais vous donner la - peut-être sept jours pour vous puis sept jours pour maître Dearden.

25

30

M. RANCOURT: Avec tout respect, Monsieur le Juge, maître Dearden a déjà fait sa présentation.

LE TRIBUNAL: Okay, réplique - je donnerais cinq jours - cinq jours à monsieur....

M. RANCOURT: Et avec tout respect, Monsieur le Juge...

LE TRIBUNAL: Oui.

MR. DEARDEN: Sorry, can I have that again please, Your Honour?

THE COURT: Well, I'm going to give him a chance to make written submissions on the applicable of the test...

MR. DEARDEN: Yes?

THE COURT: ...that you've said is trite law and I'm not necessarily disagreeing with you neither did Mr. Hameed but I'm going to give him a chance to review your materials and research the law until he's - so he's either satisfied that that is the test or make submissions that no, that's not the test and so he'll have - I'm thinking, seven days to do that.

M. RANCOURT: Alors Monsieur le Juge...

THE COURT: And you'll have....

MR. DEARDEN: Can we just get the timing?

THE COURT: Seven, 10 days; I was....

M. RANCOURT: Non, alors par rapport au temps, Monsieur le Juge, je - il sera pas possible pour moi de le faire dans le temps que vous suggérez pour les raisons suivantes.

LE TRIBUNAL: Okay. Non, mais on est ici aujourd'hui - no, no. I'm not going to give much more time because we're here, it's been set for a month and a

half and it's been - this matter of the refusals
were when? In the springtime?

M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: Quand est-ce....

MR. DEARDEN: August 16th.

THE COURT: August 16th. Okay, well not that long.

M. RANCOURT: Je comprends, Monsieur le Juge.

LE TRIBUNAL: Donc....

M. RANCOURT: Ma demande d'ajournement...

LE TRIBUNAL: Non.

M. RANCOURT: ...serait d'ajourner à une date
raisonnable parce que nous avons trois motions pour
leave to appeal qui sont....

LE TRIBUNAL: No, no, I've - j'ai déjà - j'accorde
pas votre demande pour un ajournement, mais je vais
vous donner la chance de faire des représentations
écrites.

M. RANCOURT: Oui. Je voudrais 10 jours, minimum.

LE TRIBUNAL: Okay. 10 jours. Cinq jours pour
monsieur Dearden to reply because I've already got
your factum. Five?

MR. DEARDEN: Did you say five or seven?

THE COURT: Well, do you want....

MR. DEARDEN: I'd go for seven.

THE COURT: Okay, seven.

M. RANCOURT: Mais il a déjà, c'est ses autorités.

THE COURT: It's a very short reply.

M. RANCOURT: C'est ses autorités.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: Il a déjà présenté, il a pas besoin de
répliquer.

5 LE TRIBUNAL: Bien, il va répondre à vos - I'm going to give him seven days. Je vais lui accorder sept jours à répliquer sur les questions du - les items mentionnés dans le factum, c'était surtout sur la question de - une intervention par monsieur Hameed, mais en dedans il y a les critères pour les refus.

M. RANCOURT: Oui, et c'était - c'était une approche et une tactique...

10 LE TRIBUNAL: Sur les questions....

M. RANCOURT: ...qui n'est pas acceptable à mon sens. Mais....

LE TRIBUNAL: Bon. Je vais vous donner la chance de répondre à ça avant que je fasse une décision.

15 M. RANCOURT: Merci, Monsieur le Juge. Et donc si je comprends bien, je continu présentement mes arguments...

LE TRIBUNAL: Oui.

M. RANCOURT: ...comme si j'avais eu la chance de lire le factum?

20 LE TRIBUNAL: Oui.

M. RANCOURT: Okay.

LE TRIBUNAL: C'est vraiment les questions - c'est vraiment les questions....

M. RANCOURT: Oui, d'accord.

25 LE TRIBUNAL: Les critères - monsieur Hameed avait pas d'objection à ces critères puis - question de crédibilité, ce sont des - peut-être qu'il y en a d'autres facteurs, mais ce sont des facteurs en règle générale qui sont en considération quand qu'on fait le contre-interrogatoire d'un témoin.

30 M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: On attaque la crédibilité, on attaque est-ce qu'ils sont biaisés ou non, ce sont des sortes - peut-être qu'il y a en a d'autres.

5 M. RANCOURT: Monsieur Hameed n'avait pas d'opinion sur les critères, c'est pas la même chose...

LE TRIBUNAL: Non, mais...

M. RANCOURT: ...que pas d'objection.

LE TRIBUNAL: ...moi je vous dis....

10 M. RANCOURT: Parce que c'était pas pertinent, c'est pour ça.

LE TRIBUNAL: Okay, okay. Mais je vous dis que selon moi, ma compréhension, c'est les sortes de critères qu'on s'en sert quand qu'on fait un contre-interrogatoire d'un témoin. Peut-être qu'il y en a d'autres. Peut-être....

15 M. RANCOURT: Donc là j'ai traité la question de justice procédurale, Monsieur le Juge.

LE TRIBUNAL: Oui. Oui.

20 M. RANCOURT: J'aimerais parler maintenant pour donner le contexte du - de la raison que j'ai soumis l'affidavit de madame Gervais, et - pour se faire j'aimerais adresser les énoncés de madame St. Lewis. Alors je vais simplement - pour donner le contexte....

25 LE TRIBUNAL: Est-ce que c'était pas inclus dans votre factum?

M. RANCOURT: Non, ce n'est pas inclus.

LE TRIBUNAL: Vous vous réferez pour - démontrer qu'elle avait menti ou elle avait pas dit la vérité concernant une date...

30 M. RANCOURT: Les énoncés...

LE TRIBUNAL: ...d'une réunion?

M. RANCOURT: ...précis...

LE TRIBUNAL: Oui.

M. RANCOURT: ...n'étaient pas inclus dans mon factum pour cette motion ici, et monsieur Dearden a fait la même chose ce matin, il s'est référé pour donner le

contexte à un autre factum qui est devant nous aujourd'hui, alors j'aimerais faire la même chose.

LE TRIBUNAL: Okay, mais est-ce que - est-ce que j'ai pas vu votre factum avec les deux pour déposer cette....

M. RANCOURT: Oui.

LE TRIBUNAL: Est-ce que c'est....

M. RANCOURT: J'espère que oui.

LE TRIBUNAL: Oui, puis c'est - c'était mentionné concernant une réunion, la date d'une réunion contre....

M. RANCOURT: C'est-à-dire que j'ai - j'ai simplement donné dans une phrase que ça concernait une réunion.

LE TRIBUNAL: Oui.

M. RANCOURT: Mais - là j'aimerais parler des énoncés eux-mêmes.

THE COURT: Didn't I see that?

M. RANCOURT: Pour donner le contexte.

THE COURT: Did I not see that in the purpose of the....

MR. DEARDEN: Yes, that was....

LE TRIBUNAL: Je vais vous laisser faire....

MR. DEARDEN: That's compendium tab one, Your Honour is extracts from Mr. Rancourt's factum on the purpose of....

THE COURT: Which tab?

M. RANCOURT: Bien vous pouvez aller directement à mon factum, Monsieur le Juge.

MR. DEARDEN: Tab one, Your Honour.

THE COURT: Tab one of the compendium? I don't think so. Maybe of the motion record.

MR. DEARDEN: Your Honour, just so I'm clear, what you have at tab one of this three tab compendium that I handed to you earlier is paragraphs three and 24 of the factum that pertains to this motion. It's not from some other motion, it's this motion. It's the factum he filed....

LE TRIBUNAL: Ça c'est cette motion ici.

M. RANCOURT: Oui.

MR. DEARDEN: His motion.

M. RANCOURT: Tout à fait.

LE TRIBUNAL: Oui. Donc vous avez mentionné dans ce factum, le but de cet affidavit c'est d'établir que le - madame St. Lewis a fait des fausses déclarations con - le 1^{er} mai dans sa déclaration ici concernant - relié à une réunion qui a eu lieu à telle date?

M. RANCOURT: Oui, j'ai dit ça dans le factum.

LE TRIBUNAL: Ça c'est - ça c'est vos - c'est vos documents.

M. RANCOURT: Tout à fait.

LE TRIBUNAL: Bon. Vous êtes d'accord avec ça d'abord?

M. RANCOURT: Je suis d'accord que j'ai dit ça et que - mais c'est pas la - c'est pas la suggestion au complète, ce n'est...

LE TRIBUNAL: Okay.

M. RANCOURT: ...qu'un guide, c'est le factum - je suis en train....

LE TRIBUNAL: C'est une des raisons. Ça c'est une des raisons.

M. RANCOURT: Oui.

LE TRIBUNAL: Vous avez d'autres raisons?

M. RANCOURT: Oui.

LE TRIBUNAL: Okay.

M. RANCOURT: Et je vais - je vais les présenter, mais avant, pour donner le contexte, j'aimerais rappeler très succinctement les choses que madame St. Lewis a dit qui sont en contradiction avec l'affidavit de madame Gervais. Alors dans ce qu'on appelle en anglais le « statement of claim » elle a dit,

"In the course of conducting an evaluation of the student appeal centre report, Professor St. Lewis met with representatives of the student appeal centre and requested records and data necessary."

Ensuite, dans le « reply », c'est-à-dire ça fait partie de ce qu'on appelle en anglais les « pleadings », madame St. Lewis a dit,

"The plaintiff provided the SAC advanced notice of the analytical problems in the SAC report and requested that data be provided to her that supported the SAC report."

Donc il y a un énoncé ici qu'on a dit à madame Gervais avant de produire le rapport de madame St. Lewis les problèmes qu'elle voyait, en autres mots, qu'il y a eu une communication. Ça c'est plaidé et

5 c'est un argument important dans ce qui est plaidé,
et donc c'est son tralala à la cause. Ensuite, sous
serment, pendant les examinations pour les
découvertes, madame St. Lewis a dit la chose
suivante,

"I know that that is tied because I remember
distinctly...

10 Elle dit,

...distinctly the preoccupations I set because
when I had met with Mireille Gervais in
November, 2008, one of the distinct pieces in
that meeting with her...

15 MR. DEARDEN: Excuse-me, Your Honour.

MR. RANCOURT:

...was her concern about..."

20 Et cetera.

MR. DEARDEN: Your Honour, can Mr. Rancourt point to
where in his motion record he's reading from?

25 M. RANCOURT: J'ai déjà expliqué que je suis en train
de lire d'un autre document qui est devant la Cour
aujourd'hui, mais que c'est pas dans mon motion
record, pour donner le contexte....

MR. DEARDEN: Well, then, I object.

M. RANCOURT: Monsieur - Monsieur Dearden a fait
exactement la même chose aujourd'hui.

30 MR. DEARDEN: No, I didn't.

M. RANCOURT: Oui, il a fait ça.

THE COURT: No, I'm not sure.

MR. DEARDEN: He's had solely the affidavit of Gervais, that's it and that exhibit A. That's it. He's got his motion record and that's all he's allowed to point to in his argument. Also Your Honour if he chooses to waste his time like this, he started at 2:25, there's one hour.

M. RANCOURT: Alors Monsieur le Juge, ensuite, dans la même examination pour les découvertes, madame St. Lewis a dit la chose suivante.

MR. DEARDEN: Well, I'm objecting to that, Your Honour.

THE COURT: Well, because - si c'est l'affidavit - c'est votre témoin, vous avez - vous avez où madame Gervais a préparer son affidavit dans cette matière pour vous appuyer sur - pour votre motion.

M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: Donc, vous avez dit....

M. RANCOURT: Je suis en train de répondre....

LE TRIBUNAL: Oui, mais vous avez donné ce factum...

M. RANCOURT: Oui.

LE TRIBUNAL: ...dans cette motion ici. Vous avez donné les raisons. Bon. Il y en a d'autres parce que - elle a dit à d'autres places que oui, elle avait rencontré - c'est la même chose que - pour contes - contredire la preuve de madame St. Lewis qui dit qu'elle l'a rencontré avant qu'elle a préparé son rapport avec madame Gervais, ça vous - c'est en 2009 et non pas en novembre 2008.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est selon madame Gervais, c'est parce que vous étiez pas là j'imagine.

M. RANCOURT: Vous avez raison, j'étais pas là, Monsieur le Juge.

LE TRIBUNAL: Non.

M. RANCOURT: Alors c'est....

LE TRIBUNAL: C'est madame Gervais, donc c'est une preuve - moi je suis pas ici à décider ça ici aujourd'hui, est-ce que - qui est-ce que - mais c'est une question pour être vérifiée par d'autres questions, parce que c'est un point important, selon vous aussi.

M. RANCOURT: Monsieur le Juge....

LE TRIBUNAL: Ou pas important?

M. RANCOURT: Monsieur le Juge, je suis en train de donner...

LE TRIBUNAL: Oui.

M. RANCOURT: ...le contexte...

LE TRIBUNAL: Oui.

M. RANCOURT: ...pour expliquer l'importance et l'utilité de mon affidavit de madame Gervais.

LE TRIBUNAL: L'affidavit de madame Gervais.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc - mais la question ici c'est est-ce que monsieur Dearden peut contre-interroger madame Gervais sur son affidavit que vous avez déposé. C'est pas la question vraiment pourquoi est-ce que vous l'avez déposé cet affidavit, vous avez donné deux raisons ici, peut-être une - une raison majeure - s'il y en a d'autres, tu peux me le dire.

M. RANCOURT: Oui, je veux....

LE TRIBUNAL: Mais....

M. RANCOURT: Mais - mais monsieur Dearden a suggéré que mon affidavit était simplement une façon que - deux personnes avaient des souvenirs différents.

LE TRIBUNAL: Oui.

5 M. RANCOURT: Et moi je suis en train de vous dire que c'était pas un souvenir ambigu, que madame St. Lewis a dit des choses très définitives, par exemple, en contre-examen je lui ai dit - c'était le 14, le 14 quoi - et elle dit - so je dis
10 - the 14th of what, please? Of November, 2008.

MR. DEARDEN: Your Honour, I object. He is reading from evidence that is not in his Record. Plus I have no idea what this has to do with the refusals motion that is here. I don't know why he's doing
15 this and wasting his time.

LE TRIBUNAL: C'est ça - c'est ça je suis après dire, on est ici pour discuter des questions qui ont été posées par monsieur Dearden à madame Gervais. Bon, sont pertinents - le critère, ça je vais vous
20 laisser....

M. RANCOURT: Alors voici pourquoi mon affidavit est important.

LE TRIBUNAL: Ton affidavit ou l'affidavit...

M. RANCOURT: L'affidavit que...

25 LE TRIBUNAL: ...de madame Gervais.

M. RANCOURT: ...j'ai mis de l'avant mais qui est l'affidavit de madame Gervais.

LE TRIBUNAL: Okay.

30 M. RANCOURT: Voici pourquoi il est important. Je viens de lire que madame St. Lewis a dit de façon très définitive quelque chose qui est important dans la cause et après l'examen pour les découvertes

j'ai découvert, en posant la question à madame Gervais, que ça ne pouvait pas être vrai, et donc je demande de ré-examiner la témoin par rapport à ces faits qu'elle a dit de façon répétée...

LE TRIBUNAL: Okay. Okay.

M. RANCOURT: ...est vrai....

LE TRIBUNAL: Non, mais je comprends ça, mais ça c'est la prochaine motion. C'est la prochaine motion, c'est votre demande à réinterroger madame St. Lewis sur des questions....

M. RANCOURT: Oui.

LE TRIBUNAL: Vous avez plusieurs - ça je vais vous entendre sur cette motion...

M. RANCOURT: C'est le but de mon affidavit.

LE TRIBUNAL: ...dès qu'on vient à cette motion, mais on est ici - des questions de madame Gervais.

M. RANCOURT: D'accord. C'était pour vous donner simplement le contexte...

LE TRIBUNAL: Contexte.

M. RANCOURT: ...oui.

LE TRIBUNAL: Je commence à avoir le contexte avec le temps.

M. RANCOURT: Alors voici, je vais d'abord argumenter dans cette motion, Monsieur le Juge, que cette motion devrait être radiyée à cause du comportement du conseil de la plaignante. Et je me - si vous allez à mon factum, je suis en train de parler de la section B qui s'intitule Conduct of Counsel, Altered Document Entered in Evidence.

LE TRIBUNAL: Ça c'est une autre question - t'es rendu dans une autre question vraiment là.

5 M. RANCOURT: Non, Monsieur le Juge, c'est mon argument pourquoi cette motion devrait être radiyée. Et je vais donc faire cet argument qui montre qu'il y a eu un document qui a été altéré et qui a été mis en évidence.

Alors premièrement - donc si vous allez à mon factum, à la page trois de 12 de mon factum.

10 LE TRIBUNAL: Oui.

M. RANCOURT: Alors premièrement, le - monsieur Dearden a essayé de servir madame Gervais avec une notice d'examination sans la servir personnellement, tel qui est prévu et nécessaire dans les règles.

LE TRIBUNAL: Mais c'est vous la partie....

15 M. RANCOURT: Premier fait.

LE TRIBUNAL: Mais c'est vous la partie. Madame Gervais n'est - ce n'est pas une partie de cette procédure, cette cause.

M. RANCOURT: Monsieur le Juge....

20 LE TRIBUNAL: C'est une témoin. Elle est votre témoin.

M. RANCOURT: Juste pour clarifier, juste pour clarifier....

LE TRIBUNAL: Oui.

25 M. RANCOURT: Quand une personne non-représentée a un affiant et que l'autre partie veut examiner cet affiant, l'autre partie doit servir l'affiant personnellement. Les règles sont très claires là-dessus, c'est la règle 34.04(3)(b).

30 LE TRIBUNAL: Okay, mais ça ça été fait.

M. RANCOURT: Non, ça n'a pas été fait...

LE TRIBUNAL: C'est avec un....

M. RANCOURT: ...la première fois. Et je vous donne l'historique.

LE TRIBUNAL: Okay.

M. RANCOURT: Quand mes témoins - de vous dire comment ce document a été altéré. Alors - donc première étape, ça ça été fait, ensuite....

LE TRIBUNAL: Mais juste - juste avant - monsieur, madame Gervais - elle s'est présentée pour être interrogée. Est-ce qu'elle s'est présentée à un moment donné? Il y a une date au mois d'août?

M. RANCOURT: Plus tard, mais ça c'est plus tard, Monsieur le Juge.

LE TRIBUNAL: Vous êtes avant ça?

M. RANCOURT: Je suis avant ça et je suis en train d'expliquer le contexte dans lequel un document a été altéré et mis en évidence.

LE TRIBUNAL: Okay.

M. RANCOURT: Okay. Donc premièrement....

LE TRIBUNAL: Mais juste pour clarifier....

M. RANCOURT: Parce que - parce qu'il y a eu deux fois où on a essayé d'examiner madame Gervais, une première fois et une deuxième fois.

LE TRIBUNAL: Okay.

M. RANCOURT: Et je parle de la première fois. Donc on a essayé de - on lui a servi cette notice sans la servir personnellement, j'ai tout - j'ai avisé monsieur Dearden qu'elle devait être servie personnellement, surtout qu'elle était pas en ville, elle ne pouvait pas avoir reçu ça, elle n'était pas accessible. Et il m'a répondu à plusieurs reprises, qu'elle avait été servie et que donc elle devait se présenter. Et donc là je vous - je vous réfère à

des courriels à l'onglet 1A de mon avis de motion.
1A, ça c'est mon avis de motion et ça c'est les
courriels, un après l'autre, donc y'en a un qui
commence à la page 20 - ça c'est les pages
numérotées dans l'avis de motion. Il dit,

« Monsieur Rancourt, Ms. Gervais was served
today with a notice of examination. I will be
cross-examining her on June 18th. »

Ma ques....

LE TRIBUNAL: Vous êtes à quelle page?

M. RANCOURT: Je suis à la page 20 de mon avis de
motion.

LE TRIBUNAL: Okay.

M. RANCOURT: À l'onglet 1A donc à la page 20.

MR. DEARDEN: Note the word "personally" is not in
there, Your Honour.

M. RANCOURT: Ca c'était un interruption qui n'est
pas nécessaire. Alors voici....

MR. DEARDEN: Oh, it's necessary all right.

M. RANCOURT: Voici donc il y a eu plusieurs
courriels comme ça où moi j'insistais qu'on ne
pouvait pas faire l'examination parce que madame
Gervais n'était pas disponible, était pas en ville
et que de toute façon il fallait la servir
personnellement et ce ne l'avait pas été fait, et
monsieur Dearden n'arrêtait pas de dire « Elle a été
servi et je vais l'examiner. » Donc on voit un
courriel comme ça à la page 20 que vous venez de
voir. Y'en a un autre à la page 22 où moi
j'explique la règle qu'elle doit être servi en

personne. Ensuite le prochain courriel va à la page 25. Monsieur Dearden dit,

"I will inform you again...

Il insiste,

...Ms. Gervais was served today...

Il dit,

...you can take your position before Justice Beaudoin on July 24th. I will be cross-examining Ms. Gervais on Wednesday morning."

Elle n'est pas en ville, elle n'a pas été servi, monsieur Dearden insiste qu'elle a été servi, donc il - il n'est pas - en anglais on dit forthright par rapport au service personnel et ensuite, à la page 28 il y a un autre courriel où il - il dit qu'il a eu d'autre information - c'est moins - moins pertinent. Ensuite, en suivant cela, le - la plaignante a soumis son motion - sa motion - son avis de motion, c'est-à-dire son motion record le 18 juillet. Je suis au paragraphe huit à la page quatre de mon factum. Le 18 juillet elle a soumis son avis de motion et avec tous les documents, et là dedans il y avait un affidavit d'une employée de Gowlings qui s'appelle Kathleen Short. Dans cet affidavit il y avait un autre affidavit de monsieur David Nouelle (ph) qui est ce qu'on appelle....

LE TRIBUNAL: Vous êtes à quel - vous êtes à quel - quel paragraphe?

M. RANCOURT: Là je suis au paragraphe huit de mon factum, à la page quatre de mon factum.

LE TRIBUNAL: Okay.

5 M. RANCOURT: Donc là je signale qu'il y a eu le 18 juillet les matériaux de motion de la plaignante qui ont été soumis. Dans ces matériaux il y avait un affidavit de Kathleen Short et un affidavit de David
10 Nouvelle (ph) qui est un process server. Et finalement, j'ai dit - j'ai regardé ces matériaux-là et je me suis dit « Il essaye - ça pourrait induire la Cour en erreur de dire qu'elle a été servi
15 personnellement, ces documents, tels qu'ils sont. » Et donc j'ai tout de suite dit à monsieur Dearden « Je vais examiner votre process server David Nouvelle (ph). » Et vous voyez le courriel où j'ai
20 dit ça, Monsieur le Juge, où je dis, « In light » - okay, donc - je me trompe un peu dans la chronologie là, excusez-moi, je vais - je vais reculer. J'ai
25 dit que j'allais examiner monsieur David Nouvelle (ph) et c'est uniquement après que j'ai annoncé ça que monsieur Dearden a admis, en écrit, qu'il
n'avait pas fait un service personnel à madame Gervais. Et ça vous pouvez voir le courriel en question à la page 35 de mon - de mon motion record si vous voulez.

30 Ensuite, et monsieur Dearden dans ce courriel - on peut aller à la page 35 si vous voulez. Il - monsieur Dearden dit - après tout ces courriels qu'on a échangé, il dit,

"If the purpose of your examination is to get confirmation that Mrs. Gervais was not personally served with my notice of cross-examination on her, I can confirm that fact."

5 Il nous dit seulement plusieurs jours après,
plusieurs courriels après, une fois que j'ai dit je
vais examiner votre process server. Et moi je
répond - je suis au paragraphe 10 maintenant de mon
factum, moi je répond la chose suivante, vous pouvez
10 le voir dans le paragraphe 10, je reproduis le
courriel en question et je dis,

15 "Dear Mr. Dearden, in light of your admission
that Ms. Gervais was not personally served by
Mr. Nouelle [ph], it is plain and clear that the
documents of Mr. Nouelle [ph] that you put
forward are misleading and should not have been
included in your motion record."

Et ensuite je dis,

20 "Thus I urge you to withdraw these documents of
Mr. Nouelle [ph] by 4:00 p.m. today, failing
that I will be cross-examining Mr. Nouelle [ph]
on Monday, July 23rd, 9:00 p.m. [sic] as per the
notice of examination."

25 Ensuite, j'ai examine monsieur Nouelle (ph), j'ai
accommodé sa date pour une vacance et je l'ai
examiné le 20 juillet. Et là si vous allez au
paragraphe 12 de mon factum qui est à la page cinq
de mon factum, vous pouvez voir, Monsieur le Juge,
que j'ai découvert pendant cette examination de
30 monsieur Nouelle (ph) qu'un document qui avait été
mis en évidence, sous serment, a été altéré. Par
exemple, si on regarde l'échange de questions et de

réponses avec monsieur Nouelle (ph), je dis dans un des documents qu'il - qu'il a présenté, il y avait des mots qui étaient soulignés et je dis, question,

5

"The words "to do a personal service" are underlined, am I correct?"

Il dit,

10

"On this copy, yes."

Là je dis,

15

"Did you make that underline?"

Il dit,

"No."

20

"Was it present when you picked up the document?"

"No."

25

"Therefore, on this copy it would have have to have been made after you filled out this document?"

Il dit,

"Yes."

30

Monsieur Dearden interject, et cetera. Et là monsieur Dearden dit,

"What, the underline?"

J'ai dit,

"Yes, the underline."

Et monsieur Dearden dit "Yes", et ensuite je dis,

"You are certain about that?"

Et le témoin dit,

"Yes."

Et donc ça veut dire ce document - et on devrait regarder ce document pour savoir exactement de quoi on parle, ce document est à la page 109 de mon avis de motion. Alors je vous demanderais de regarder ce document, parce que c'est une accusation sérieuse d'avoir altéré un document. Donc c'est à - dans l'onglet 1D à la page 109.

LE TRIBUNAL: Là c'est mentionné « to do personal service »?

M. RANCOURT: Oui, alors....

LE TRIBUNAL: Et c'est souligné et non - c'est ça la chose, que c'était pas souligné?

M. RANCOURT: Non.

LE TRIBUNAL: C'est la seule différence?

M. RANCOURT: Non, mais attendez - oui, mais regardez - on a demandé de faire un service personnel, le contexte est qu'on voulait prouver qu'il y avait eu un service personnel et les - le document qui est mis de l'avant ici et celui-là...

LE TRIBUNAL: Mais là ça dit...

M. RANCOURT: ...qui est - qui est....

LE TRIBUNAL: Monsieur - là ça dit,

5

"Please attempt to do a personal service of this notice of examination."

Là c'est « complete » le 16 juillet, Dave. Ça veut dire - mais ça c'est des instructions...

10

M. RANCOURT: Oui.

LE TRIBUNAL: ...de faire une signification personnelle.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc....

15

MR. DEARDEN: Which he did, he attempted.

LE TRIBUNAL: Okay. Donc il dit complete - complété le 16 juillet.

M. RANCOURT: Oui.

LE TRIBUNAL: Il signe un affidavit.

20

M. RANCOURT: Oui.

LE TRIBUNAL: Dites-vous que l'affidavit est faux?

M. RANCOURT: Non, ce que je suis en train de dire est la chose suivante....

LE TRIBUNAL: Il l'avait signifié - ou il avait....

25

M. RANCOURT: C'est très simple, Monsieur le Juge - ce memorandum était ses instructions. Ses instructions étaient,

30

"Please attempt to do a personal service of this notice of motion at the University of Ottawa, Student Appeal Centre. If unable to serve, please leave the notice at the Student Centre."

5 La deuxième option ne serait pas un « personal service ». Donc le fait d'avoir souligné « attempt personal service » et ensuite que l'autre - que Dave ait signé « completed » avec un soulignement, ça sous entend qu'à partir des deux positions, ça peut induire en erreur qu'un « personal service » a été fait, puis le point important c'est que - comment est-ce possible que ces mots-là précisément, qui ont ce sens-là, ont été soulignés? Monsieur Dave a juré 10 qu'ils n'étaient pas soulignés, qu'ils étaient pas soulignés quand il a reçu le document et ça du être souligné après. Et moi j'appelle ça altérer un document pour ensuite le mettre dans un affidavit, ce document-là a été mis dans un affidavit de 15 Gowlings, affirmé par une certaine Kathleen que j'ai nommé tantôt.

LE TRIBUNAL: Oui. Oui, mais assumons c'était souligné par après, ça change quoi dans l'histoire?

20 M. RANCOURT: Ça s'appelle un document altéré, Monsieur le Juge.

LE TRIBUNAL: Oui, mais ça change....

M. RANCOURT: Ça change que ça induis....

LE TRIBUNAL: Parce qu'il y avait signification.

25 M. RANCOURT: C'est très clair, Monsieur le Juge, il y avait deux possibilités et celle qui est soulignée c'est celle....

LE TRIBUNAL: Mettons qu'il y a un document puis tu fais un check - un check là-dessus.

M. RANCOURT: C'est pas un check, Monsieur le Juge.

30 LE TRIBUNAL: Puis là c'est - bien c'est....

M. RANCOURT: C'est....

5 LE TRIBUNAL: Souligner quelque chose, c'est-tu -
est-ce qu'il y avait - est-ce qu'il y avait un
affidavit ou quelque chose de monsieur Dearden qui
disait qu'il avait signifié personnellement madame
Gervais qui serait fausse dans le moment que - si -
est-ce qu'il a dit quelque chose qui était faux?

M. RANCOURT: Non.

LE TRIBUNAL: Si un procureur....

M. RANCOURT: Dans un - monsieur...

10 LE TRIBUNAL: Donc selon vous, non?

M. RANCOURT: ...Dearden n'a pas signé d'affidavit,
monsieur Dearden n'a pas fait d'affidavit.

LE TRIBUNAL: S'il n'y a pas de....

15 M. RANCOURT: Et monsieur Dearden n'a pas été - il a
refusé de répondre s'il y avait eu un service
personnel, j'ai dû me battre pour avoir une réponse,
c'est seulement quand j'ai voulu examiner son
monsieur Nouvelle (ph)....

20 LE TRIBUNAL: Mais Monsieur Rancourt - Monsieur
Rancourt...

M. RANCOURT: Oui.

25 LE TRIBUNAL: ...mais cette madame-là - madame
Gervais elle s'est présentée pour être interrogée à
un moment donné, au mois d'août, okay, je comprends
vous avez eu des courriels pour dire est-ce qu'elle
était pour venir, est-ce qu'elle est en vacance,
est-ce qu'elle était signifiée personnellement ou
est-ce que c'est envoyé par courriel ou c'est-tu
envoyé par la poste générale enregistrée - bien ça
30 c'est tout - ça c'est dans le passé ça, ça c'est -
madame s'est présentée, il y avait des objections,
moi je suis ici pour trancher les objections de

madame qu'elle dise qu'elle voulait pas ou elle veut pas répondre ou vous voulez pas qu'elle répondre à certaines questions. Donc c'est ça mon but ici.

5 M. RANCOURT: Oui, et mon argument, Monsieur le Juge, est très...

LE TRIBUNAL: Est-ce que - oui.

M. RANCOURT: ...simple.

LE TRIBUNAL: Oui.

M. RANCOURT: Mon argument est....

10 LE TRIBUNAL: Que cet - le souligné ici....

M. RANCOURT: Le fait de souligner ça - le but, étant donné le contexte, était...

LE TRIBUNAL: Qu'on devrait radiyer puis arrêter tout ce processus ici?

15 M. RANCOURT: Oui.

LE TRIBUNAL: Non.

M. RANCOURT: Parce que c'est très grave.

LE TRIBUNAL: Je pense vous devriez aller à votre prochain point.

20 M. RANCOURT: Donc juste pour clarifier, c'était mon argument que...

LE TRIBUNAL: Okay.

M. RANCOURT: ...cette altération du document est très grave.

25 LE TRIBUNAL: Okay.

M. RANCOURT: Et je voulais le signaler et je voulais l'utiliser pour annuler cette motion.

LE TRIBUNAL: Okay. Prochain point?

M. RANCOURT: D'accord.

30 MR. DEARDEN: Sorry, what was just said there, Your Honour?

5 THE COURT: Well, he's - Mr. Rancourt you may get the translation that, if the document was misleading I might agree. Or if it was false, I might agree. But in that it's not false and not misleading, I don't agree. So I'm telling Mr. Rancourt to move on to his next point.

MR. DEARDEN: And then I didn't - it was what he said afterwards because he's very good at this.

10 THE COURT: Well he said he thought it was important, to him it was important and he understood it was a misleading document. And I'm saying it's not misleading and it's not untrue so that I don't find it significant.

15 MR. DEARDEN: I'm going to have some points in reply on that.

THE COURT: It's not necessary to reply.

20 MR. DEARDEN: Well, you know why it is, Your Honour? Because he's going to use this on his leave application to say he was cut off and he has completely mislead you.

25 THE COURT: Well, I'm sorry but there's a limit to how much I will listen to and if there was something misleading or false on the documents that you supplied to Mr. Rancourt or to the Court, that could be potentially a very serious thing and I would look at that very carefully. But having heard Mr. Rancourt and found that there's nothing other than the underlining of no misleading other than, as I say, is like somebody putting a check on or - and in
30 any event, Mme. Gervais attended and was cross-examined. You know, whether someone was served or not served or sent by mail, I've said this in

French, it's not relevant to the issues that I have to decide today which is whether these questions and I'll hold for my final decision on hearing Mr. Rancourt in his written reply what the test I have to apply and whether those questions should be answered given the purpose for which this affidavit was - that's what I have to do. So I don't want to go through the history of you and Mr. Dearden [sic] having fights about getting someone to be examined on a certain date. That will never get finished if I have to listen the problems you've had on scheduling.

M. RANCOURT: Je vais passer au prochain point, Monsieur le Juge, si on peut....

THE COURT: That's why I'm saying we move to another point.

M. RANCOURT: Je vais passer au prochain point.

MR. DEARDEN: No, Mr. Rancourt, just a second please. Your Honour, could I just make two quick points, please? You were talking about giving Mr. Rancourt the seven days or 10 days on...

THE COURT: Ten days. Ten days to respond to the test that I have to apply.

MR. DEARDEN: ...on legal - the test.

THE COURT: Yes.

MR. DEARDEN: Can you please make sure he's clear Your Honour that it's just the legal test. That he's not to hit you with a brick of written submissions of 100 plus pages to reargue the refusals motion.

M. RANCOURT: C'est clair....

MR. DEARDEN: Because I've given you the law.

LE TRIBUNAL: Non, c'est clair - les affaires dans votre....

M. RANCOURT: C'est un factum que je n'avais pas vu.

LE TRIBUNAL: C'est ça.

M. RANCOURT: Je vais répondre aux arguments légaux dans le factum qui sont pertinents à cette motion, c'est très clair.

LE TRIBUNAL: C'est ça.

M. RANCOURT: Oui. Donc Monsieur le Juge on peut - vous avez fait une décision que le soulignement - moi j'ai proposé que le soulignement c'était souligné un de deux possibilités où la personne qui signait disait « completed », et ç'avait l'air qu'une des deux possibilités dans le message avait été souligné, vous avez trouvé que ce n'est pas « misleading ». Alors on passe au prochain point.

THE COURT: It's not misleading the Court on any material or relevant issue.

MR. DEARDEN: It's not misleading the Court on any irrelevant issue either.

THE COURT: Or irrelevant. It doesn't appear to be misleading but it is a change. I acknowledge your point that there may have been an underlining that wasn't there initially.

MR. DEARDEN: And we have no idea who did that, Your Honour. We have no idea.

THE COURT: And that's whether it's....

MR. DEARDEN: And it was put in as a paper trail affidavit to show Judge Beaudoin that we attempted service. Nowhere did anyone say there was personal service. We attempted it because what he did was he gets this affidavit from Mireille Gervais on July

9th knowing she's going on holidays, not making her subject to cross-examination and says too bad. I said,

5 "Well, I'm going to argue before Judge Beaudoin it's inadmissible because you haven't let me cross-examine her and you gave me this affidavit knowing she was taking off on vacation."

10 So he put the paper trail in just to show that there was an attempt at personal service and to this day, Your Honour, I don't know who underlined it but I put in the - a copy of the original affidavit as it existed when that affidavit was sworn. There was no alteration, there was no misleading, there was none of what I've just heard which is just awful.

15 THE COURT: Okay.

 LE TRIBUNAL: Mais de toute façon....

20 M. RANCOURT: Bon, alors monsieur Dearden n'a pas d'idée comment ça pu être souligné et monsieur Dearden a toute une histoire à raconter sur comment le service ne s'est pas fait parce que madame était en vacance, et cetera, c'est pas pertinent et on passe au prochaine point.

 LE TRIBUNAL: Okay.

25 M. RANCOURT: Je suis d'accord.

 LE TRIBUNAL: Okay.

30 M. RANCOURT: Alors je vais maintenant présenter un argument légal qui est contraire à celui qui a été présenté par monsieur Dearden, en utilisant une - une autre autorité que celle qu'il a utilisé. Je vais - je ne vais pas poursuivre le paragraphe C de mon affidavit - de mon factum c'est-à-dire.

MR. DEARDEN: Section C?

M. RANCOURT: Oui. Et puis je vais aller à la question de la loi. Le paragraphe - les paragraphes 25, 26 étaient pour argumenter le point précédent. Okay. Alors par rapport au critère de pertinence, c'est la question centrale, n'est-ce pas, Monsieur le Juge?

LE TRIBUNAL: Dans un contre-interrogatoire - pertinence est un facteur. Crédibilité c'est aussi un facteur dans un contre-interrogatoire, c'est pas - c'est....

M. RANCOURT: Alors je vais faire très succinctement mon argument légal.

LE TRIBUNAL: Oui.

M. RANCOURT: Comme suit - premièrement, ce témoin n'est pas un témoin en procès devant un juge dans une cause criminelle. C'est pas la même chose du tout. Deuxièmement, ce n'est pas un témoin expert où on doit s'assurer de l'indépendance de l'expert. En fait, c'est un témoin d'une sorte très particulière qui est prévu dans les règlements et dans la jurisprudence, c'est un témoin - c'est un affiant, c'est un témoin qui a mis un affidavit devant la Cour. Et dans le cas d'un affidavit, la jurisprudence est très différente que celle que monsieur Dearden vous a présenté et est très claire aussi. Alors je vais la résumer comme suit, avec les autorités qui sont pertinentes.

Premièrement, dans le - donc la cause que je vais citer c'est Caputo v. Imperial Tobacco Limited (ph) de 2002 que j'ai mis à l'onglet un de mon factum.

Et le premier point en anglais que j'ai écrit ici c'est,

5 "A deponent may be cross-examined on any facts set out in his or her affidavit and any fact in his or her knowledge which is relevant to the determination of the motion."

10 Alors ça c'est très important parce que la motion en question est une motion de refus. Donc le contexte précis c'est cette motion de refus dans laquelle j'ai déposé l'affidavit. Ce n'est pas la cause principale. On ne peut pas utiliser un contre-examinatoire sur un affiant comme si c'était un substitut pour des découvertes; on a pas le droit de faire ça.

15 Deuxièmement,

20 "A witness being cross-examined on an affidavit may be cross-examined on the truth of facts deposed or answers given, but not on irrelevant issues directed solely at credibility."

25 Et ça c'est très clair. On ne peut pas faire ça. Et là je vais vous amener à l'autorité en question qui est Caputo v. Imperial Tobacco Limited (ph) qui est à l'onglet un. Et c'est un autorité par Master McLeod qui cite Master Beaudoin qui est maintenant le Juge Beaudoin, parce que Master McLeod et le Juge Beaudoin ont fait une revue de la jurisprudence de cette question-là et on résumé la question dans Caputo v. Imperial Tobacco (ph). Et je vous signale
30 - juste - j'aimerais juste ouvrir une parenthèse,

5 Monsieur le Juge, j'aimerais vous signaler que l'argument légal que je suis en train de faire est exactement le même argument légal que monsieur Doody a fait dans cette même action et qui a eu un succès sous la décision du Juge Beaudoin.

10 Et je reprends les mêmes mots que monsieur Doody et je reprends la même autorité que monsieur Doody a utilisé. Et si on regarde cette décision, Caputo v. Imperial Tobacco (ph) et on va à la page cinq de cette décision, et je regarde le paragraphe 14 de la décision,

15 "A deponent may be cross-examined on any facts set out in his or her affidavit, but also on any fact in his or her knowledge, which is relevant to the determination on the motion. Cross-examination may also be directed towards the credibility of the evidence - credibility of the evidence."

20 LE TRIBUNAL: Mais mettons - si - si la preuve c'est que madame Gervais a eu une rencontre à un moment donné, puis ça c'est la preuve, donc c'est la crédibilité de cette preuve-là, est-ce que c'est vrai, c'est pas vrai?

25 M. RANCOURT: Okay, et il continu....

LE TRIBUNAL: Ça c'est le point. Ça c'est le point principal.

M. RANCOURT: Il continu sa description.

LE TRIBUNAL: Oui.

30 M. RANCOURT: Si je continu, ce qu'il est en train de dire dans ce même paragraphe 14, vous voyez qu'il cite un autre autorité, et dans cet autre autorité

on dit, vers la fin du premier paragraphe dans cet autorité, le paragraphe 17 qui est cité là, on dit,

"Questions may also be asked to test the credibility of the facts deposed or the answers given, although questions otherwise irrelevant which are directed solely at the credibility - at credibility are improper."

Et je sou mets, Monsieur le Juge, que toutes les questions refusées ont comme but que d'attaquer la crédibilité de l'affiante, à savoir si elle peut être indépendante, si elle a une relation avec moi, et cetera, c'est toutes des questions qui sont reliées uniquement à sa crédibilité et qui ne touchent pas les faits fondamentaux qu'elle met de l'avant dans son affidavit. Monsieur Dearden a presque pas demandé de questions pour questionner l'authenticité de son courriel qu'elle a mis en évidence, presque pas demandé de questions - presque pas, il y avait très, très peu de questions sur les questions des faits et ça n'a pas été creusé très loin de ce côté-là. Toutes les questions sont reliées à la crédibilité.

Je - bon. Maintenant j'aimerais passer en revue les questions de refus de - que monsieur Dearden a mis dans son - dans son chart, puis signaler quelques unes en particulier. J'aimerais signaler à la page 53 juste un exemple pour introduire le sujet. À la page 53 de son - de son avis de motion....

LE TRIBUNAL: Ça c'est de votre avis de motion?

5 M. RANCOURT: Non, de l'avis de motion de monsieur Dearden. Okay. Excusez-moi, je me trompe là. Donnez-moi une seconde parce qu'il y a beaucoup, beaucoup de documents ici. Okay. Ce que je vais faire - je vais juste regarder des questions de refus une après l'autre rapidement. Si on commence à la page un de refusal chart.

10 LE TRIBUNAL: Mais votre point principal c'est - questions sur la crédibilité ne sont pas permis?

15 M. RANCOURT: Les questions qui sont uniquement basées sur la crédibilité ne sont pas pertinentes et ça doit adresser la crédibilité des données, de la raison de l'affidavit, des données qui sont présents dans l'affidavit. Et les autorités sont très claires, et monsieur Doody a fait les mêmes arguments devant le Juge Beaudoin dans cette même cause et Juge Beaudoin lui a donné complètement raison. Par exemple, la question - la première question dans le chart,

20 "Ms. Gervais, did Mr. Rancourt teach you any courses at the University of Ottawa?"

25 Ça c'est ce qu'on appelle en français, une expédition de pêche, it's a fishing expedition en anglais. Est-ce qu'il vous a déjà enseigné des cours? Le professeur de physique vous a - est-ce qu'il vous a enseigné des cours en droit? Des choses comme ça. C'est complètement détaché de tout ce qui peut se rattacher à la crédibilité d'une
30 évidence qui est mis de l'avant. Et en plus - bon - et la prochaine question,

"Monsieur Rancourt also said during his examination for discovery that you two are friends, do you agree with that?"

5

En quoi c'est pertinent par rapport à l'indépendance de pensée à son avis professionnel de ce qui s'est passé quand qu'elle a écrit son rapport, en quoi ça peut être pertinent que nous soyons des amis ou pas? Je - je vous dis que ça ne parle que de sa crédibilité, uniquement. Et en plus, monsieur Dearden....

10

LE TRIBUNAL: Mais juste - juste pour que je comprends, je reviens au tout début de cette affaire, cet - cet affidavit de madame Gervais c'est en - en suspend, en appui de votre motion de refus. M. RANCOURT: Oui.

15

LE TRIBUNAL: Donc c'est pas un affidavit qui va être déposé en preuve au procès.

20

M. RANCOURT: Je ne connais pas les règlements assez pour savoir ça, Monsieur le Juge.

25

LE TRIBUNAL: Non, il faut tu appelles le témoin, madame Gervais, oui ou non, si c'est important cette date peut-être - je ne sais pas, ça c'est à venir. Donc c'est - c'est - est-ce que c'est nécessaire d'avoir son affidavit ou est-ce que ça peut simplement être radiyé ou retiré et puis il y en aura plus question.

30

M. RANCOURT: Oui, c'est nécessaire pour la raison suivante.

LE TRIBUNAL: Pourquoi est-ce que c'est nécessaire?

M. RANCOURT: Oui.

LE TRIBUNAL: Pour ton - ton affidavit - parce qu'il me semble c'est une sorte de preuve pour procès.

M. RANCOURT: Alors....

LE TRIBUNAL: Pourquoi c'est un argument de maître Dearden...

M. RANCOURT: Oui.

LE TRIBUNAL: ...parce qu'on peut pas faire des - déposer des affidavits au procès.

M. RANCOURT: Vous avez raison, Monsieur le Juge....

LE TRIBUNAL: Donc c'est pourquoi?

M. RANCOURT: Vous avez touché une question centrale...

M. RANCOURT: Oui.

LE TRIBUNAL: ...qui est très importante dans cette motion...

LE TRIBUNAL: Oui.

M. RANCOURT: ...et j'ai essayé de l'expliquer, mais j'ai - je n'ai pas été assez clair la première fois. Et donc je vais l'expliquer comme suit. J'ai fait....

LE TRIBUNAL: Parce que le refus - le refus - les refus c'est votre motion d'avoir - de re-questionner madame St. Lewis.

M. RANCOURT: Oui.

LE TRIBUNAL: Sur - vraiment sur ce point-là est-ce - quand est-ce la réunion a eu lieu?

M. RANCOURT: Oui.

LE TRIBUNAL: Puis franchement c'est la même chose que monsieur Dearden, il veut questionner madame Gervais, c'est la même question, est-ce que cette réunion...

M. RANCOURT: Oui, mais monsieur...

LE TRIBUNAL: ...quand est-ce....

M. RANCOURT: ...Dearden ne peut pas déplacer les découvertes sur une affiante, c'est contre la jurisprudence.

5 LE TRIBUNAL: Je comprends.

M. RANCOURT: Il doit - il doit faire ses découvertes en découvertes et moi aussi. Je dois faire mes découvertes en découvertes. On ne peut pas le déplacer sur un affiant.

10 LE TRIBUNAL: Non, mais il peut contre-interroger un affiant; ça c'est la chose.

M. RANCOURT: Uniquement dans le contexte de son affidavit pour tester l'évidence qui est mis de l'avant dans l'affidavit. Uniquement. C'est ça - c'est ça la jurisprudence. Mais Monsieur le Juge, je veux revenir à votre question parce que je n'ai pas été clair.

15 LE TRIBUNAL: De toute façon, selon vous c'est nécessaire? Selon vous c'est nécessaire d'avoir cet affidavit?

20 M. RANCOURT: Mais j'aimerais expliquer pourquoi, Monsieur le Juge.

LE TRIBUNAL: C'est parce que - assumons - assumons il y a deux témoins, un dit « On s'est rencontré au mois de novembre 2008. » puis l'autre dit « Non, non, c'est septembre, 2009. » Assumons c'est le cas, moi je ne suis pas le juge de procès.

25 M. RANCOURT: Je veux pas que vous....

LE TRIBUNAL: Je n'ai pas à trancher cette question, qui a raison, est-ce que quelqu'un a fait une erreur, oui ou non.

30 M. RANCOURT: Monsieur le Juge, je ne vous....

LE TRIBUNAL: Bien là - c'est pourquoi est-ce que -
ça va tu avancer la - le dossier?

M. RANCOURT: Je comprends parfaitement votre
question...

LE TRIBUNAL: Oui.

M. RANCOURT: ...Monsieur le Juge, c'est la question
centrale par rapport à la pertinence de cet
affidavit dans cette motion de refus. Je veux
répondre à cette question.

LE TRIBUNAL: Oui.

M. RANCOURT: Permettez-moi de répondre.

LE TRIBUNAL: Okay.

M. RANCOURT: La - et j'ai perdu mon fil de pensées,
excusez-moi une seconde. C'est que pendant - donc
je ne vous demande pas de trancher qui avait raison,
pas du tout, ce n'est pas la raison de l'affidavit.

LE TRIBUNAL: Non, je ne peux pas.

M. RANCOURT: Non. Et je ne vous demande pas ça.

LE TRIBUNAL: Non. Je ne peux pas le faire.

M. RANCOURT: Et je ne vous demanderai pas ça.

LE TRIBUNAL: Oui.

M. RANCOURT: Et je ne vous l'ai pas demandé. C'est
pas ça la question. La question est la suivante :
l'affidavit de madame Gervais est mis pour montrer
que j'ai découvert, après les examinations au
préalable, ce qu'on appelle en anglais discoveries,
que les énoncés par rapport à ce meeting étaient
faux. Donc je demande, étant donné qu'il y a de
l'évidence - que je vous demande pas de juger, mais
je vous demande de regarder qu'il y a effectivement
d'évidence que ça pourrait être faux. Je veux donc
avoir la permission pour examiner la témoin, c'est-

à-dire la plaignante sur cette question-là, parce que je n'ai pas eu l'occasion de le faire.

LE TRIBUNAL: Est-ce que c'est pas mieux de la confronter au procès avec votre preuve puis la confronter - là vous l'avez annoncé - en tout cas, ça c'est une décision de tactique....

M. RANCOURT: Oui, c'est une décision que j'ai pris.

LE TRIBUNAL: Oui.

M. RANCOURT: Et c'est parce que je - je pense qu'il y aura des questions de découvertes - parce que les découvertes c'est beaucoup plus large que qu'est-ce qui peut se passer en procès, Monsieur le Juge.

Donc je veux explorer cette question-là. Il y aura des questions de suivi qui sont naturelles et je veux vraiment savoir le fond de l'histoire pour décider qu'est-ce que je vais utiliser dans le procès. C'est pas la même chose que le procès. Et donc ça c'est la raison de mon affidavit; c'est pour montrer que j'ai besoin de ré-examiner la plaignante sur cette question-là qui est une question importante dans la cause. J'ai voulu tantôt expliquer pourquoi c'était une question importante dans la cause. Si vous voulez je peux l'expliquer.

LE TRIBUNAL: Parce que pourquoi - pourquoi c'est important, franchement, parce que - la question dans cette cause est est-ce que vous avez droit d'une expression - liberté d'expression large ou est-ce que les commentaires publiés dans votre blog ça - c'est diffamation? C'est une cause de diffamation. On part à des tangences - on est plus dans la même cause là - ça c'est - est-ce que madame a eu une rencontre - deux autres madames qui ne sont pas des

parties - madame St. Lewis est partie - mais c'est-tu pour la crédibilité de madame.

M. RANCOURT: Alors je peux....

LE TRIBUNAL: Mais c'est pas une question de
5 crédibilité franchement, parce que c'était publié.
C'est vraiment est-ce que - dans ces circonstances,
contextes, c'est votre description du rapport et
madame St. Lewis - est-ce que c'est diffamation -
c'est une cause de diffamation.

10 M. RANCOURT: Bien sûr, Monsieur le Juge. Mais vous
voyez, dans une cause de diffamation...

LE TRIBUNAL: Oui.

M. RANCOURT: ...Monsieur le Juge, il y a une
critique qui est apportée et dans cette - la
15 question est est-ce que cette critique était
raisonnable? Est-ce que c'est un « fair
comment »...

LE TRIBUNAL: Oui.

M. RANCOURT: ...par exemple, on dit en anglais.

20 LE TRIBUNAL: Oui.

M. RANCOURT: Pour savoir si c'est raisonnable il
faut connaître le contexte, il faut connaître les
évidences et une - un des points d'évidence c'est la
nature même de ce rapport qui est un de mes points
25 central d'évidence dans la cause principale. Le
rapport de madame St. Lewis est un des grands
document que j'utilise dans ma défense. Si ce
document-là - comment ce document-là on perçoit
qu'il a été produit, si madame St. Lewis a
30 effectivement pris la peine de consulter la personne
qui a critiqué avant de la critiquer, de lui donner
une chance de réponse, cette question-là est

centrale sur comment son rapport est perçu et donc dans quelle mesure les critiques peuvent être valable ou pas de son rapport. Et donc ça se rattache directement à la question de diffamation.

LE TRIBUNAL: Okay.

M. RANCOURT: C'est pour ça que c'est central et que je ne veux pas être privé de cette information-là.

LE TRIBUNAL: Okay. Oui, je comprends votre raisonnement.

M. RANCOURT: Oui. Donc si je peux donc continuer, question par question rapidement. La question 10,

"You've spoken out publically, Mrs. Gervais, supporting Mr. Rancourt in his labour dispute with the University of Ottawa involving his dismissal from the University of Ottawa."

Beaucoup de gens se sont prononcés sur cette question-là, de toutes catégories de la société.

LE TRIBUNAL: Mais est-ce que c'est contesté....

M. RANCOURT: En quoi c'est pertinent qu'elle aussi ait pu se prononcer sur cette question-là? C'est une question séparée, différente par rapport à si ma démission - pas ma démission, mon congédiement...

LE TRIBUNAL: Mais c'est pas contesté....

M. RANCOURT: ...a été raisonnable ou pas.

LE TRIBUNAL: Oui, mais c'est pas contesté que - j'imagine que le You Tube - l'émission You Tube à quelque part ou une....

M. RANCOURT: Non.

LE TRIBUNAL: Mais c'est pas le cas?

M. RANCOURT: C'est pas contesté.

LE TRIBUNAL: Non, mais là - dès que des choses qui ne sont pas contestées - est-ce que ça vaut la peine de faire des motions - des refus pour des choses non contestées, non critiques?

5 M. RANCOURT: Mais est-ce que ça vaut la peine de - d'obliger quelqu'un de répondre à quelque chose qui n'est pas contesté et de les amener en - en motion de refus? Ça vaut pas la peine.

10 LE TRIBUNAL: Bon, des deux côtés peut-être, un peu....

M. RANCOURT: Mais mon point....

LE TRIBUNAL: Parce que là - ces questions....

M. RANCOURT: Mon point est...

LE TRIBUNAL: Vous avez....

15 M. RANCOURT: ...que c'est pas pertinent. Ce n'est pas pertinent.

LE TRIBUNAL: Bon bien c'est - si - elle est proche à vous, c'est ça la position de maître Dearden, c'est est-ce qu'elle est une amie et puis est-ce que vous êtes des bons chums, mettons on dit des - c'est pas du bon français, mais - si vous êtes dans cette sorte de relation, bon bien là - c'est pas la même....

M. RANCOURT: Je....

25 LE TRIBUNAL: C'est pas comme un étranger qui....

M. RANCOURT: Monsieur le Juge, j'ose....

LE TRIBUNAL: C'est ça le point.

M. RANCOURT: J'oserais dire que...

LE TRIBUNAL: Oui.

30 M. RANCOURT: ...les questions à savoir dans quelle mesure vous êtes amis, des bons amis, de moins bons amis, et cetera, tout ça n'est pas pertinent.

LE TRIBUNAL: Ah, je ne sais pas là. Je ne le sais pas. Ça c'est....

M. RANCOURT: C'est ce que je sou mets. Ce n'est pas pertinent pour examiner ce qui est dans l'affidavit.

LE TRIBUNAL: C'est une question - c'est une question.

M. RANCOURT: Il y avait - je vais à la question 24 à la page neuf.

"Did you write the first draft of this? How many drafts....

Et cetera. C'est une expédition de pêche. C'est incroyable. Est-ce que vous - est-ce que c'est vous qui avez écrit votre rapport et dans quel détail vous l'avez écrit et allez-vous me montrer tous les documents qui m'offrent que c'est vous qui l'avez écrit? C'est complètement une expédition de pêche, ça n'a - ça n'a pas d'allure de poser des questions comme ça. Une autre question, la question 29,

"Why are you supporting Mr. Rancourt's refusal and production motion?"

Je m'excuse, mais il y a quelque chose qui s'appelle « litigation privilege ». Il y a eu des communications entre madame Gervais et moi qui sont privilégiées. Je me - je suis auto-représenté, je joue le rôle d'un avocat quand je prépare mon cas devant la Cour. Je n'ai pas à dire à monsieur Dearden que j'ai demandé - et comment j'ai demandé et montrer mes courriels que j'ai demandé à madame Gervais si elle pouvait écrire cet affidavit et

comment je lui - j'ai pu lui demander. Je n'ai pas à fournir aucune de cette information-là, ça s'appelle « litigation privilege » en anglais. C'est complètement allez trop loin, c'est briser toutes les règles. Un autre exemple ici parce que je - je pourrais les passer individuellement, mais je prends quelques exemples à droite à et gauche. La question 41,

"As a standalone question, Ms. Gervais, were you critical prior to swearing your July 9th, 2012 affidavit - were...

LE TRIBUNAL: Vous êtes à quelle page? Quelle page?

M. RANCOURT: Page 15 des refus, la question 41.

Alors,

...were you critical prior to swearing your July 9th affidavit. Were you critical of Professor St. Lewis and/or Professor St. Lewis' evaluation report of your 2008 SAC report..."

Et cetera. Ce n'est pas un secret. Monsieur Dearden a déjà signalé un article que madame Gervais a écrit où elle avait été critique du rapport. Ce n'est pas un secret et ça n'a pas de pertinence. C'est encore une expédition de pêche. En quoi est-ce que ça peut faire - elle a écrit un rapport, quelqu'un a écrit un rapport qui critique son rapport, ensuite elle a critiqué ce rapport qui critiquait son rapport, en quoi ça peut être pertinent?

LE TRIBUNAL: Oui, mais ils se critiquent un à l'autre.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est ça, finalement qu'ils font - c'est ça que - il veut avoir cette preuve que oui, votre témoin c'est une critique du - madame....

M. RANCOURT: Mais ce sont des critiques professionnelles sur un blog...

LE TRIBUNAL: Oui.

M. RANCOURT: ...de son travail qui explique...

LE TRIBUNAL: Mais ça c'est....

M. RANCOURT: ...que ce document - ce sont deux professionnels qui se critiquent...

LE TRIBUNAL: Oui.

M. RANCOURT: ...dans le milieu académique.

LE TRIBUNAL: Oui.

M. RANCOURT: Une première écrit un rapport....

LE TRIBUNAL: Est-ce que c'est - est-ce que c'est pas la réponse, simplement? Oui. Les critiques de madame. Les critiques de moi.

M. RANCOURT: Mais c'est pas pertinent.

LE TRIBUNAL: Mais c'est ça la question. C'est ça la question.

M. RANCOURT: C'est pas pertinent. À la page 16, la question 46,

"Ms. Gervais, I'm also putting it to you that you are a supporter of Mr. Rancourt in his liable action."

Alors cette question-là est très intéressante, Monsieur le Juge, parce que - qu'est-ce que ça veut dire « a supporter »? Est-ce que ça veut dire donc de l'argent? Est-ce que ça veut dire a les mêmes opinions que l'autre personne sur certains points?

5 Est-ce que ça veut dire que - qu'est-ce que ça veut dire? C'est trop large. Ce n'est pas ce qu'on appelle en anglais « a fair question ». C'est - et - et c'est tellement large que c'est une expédition de pêche, parce que c'est trop large, c'est pas spécifique. Ça se rattache à rien. Et ce n'est pas relié à l'affidavit en question d'aucune façon, d'aucune façon. J'en ai une autre ici à la page 20. C'est la question 47.

10 "Ms. Gervais, what prompted you in November, 2011 to provide this information to Mr. Rancourt to assist him in the defence of this liable action?"

15 "Litigation privilege". C'est très clair, est-ce que - est-ce que - est-ce que j'aurais le droit, moi, de demander à monsieur Dearden à son affiant, « Madame l'affiante, qu'est-ce qui vous a amené à être d'accord pour mettre de l'avant un affidavit pour monsieur Dearden dans la cause St. Lewis? » Ça serait pas permis du tout. Et de la même façon ça ne peut pas être permis ici. C'est beaucoup trop large. Ça n'a pas de sens. Ça serait vraiment un exemple de deux fois deux mesures. Donc toutes ces questions de ce type-là, pourquoi vous avez mis un affidavit, mais - mais comment est-ce qu'on peut poser une telle question? Pour moi c'est complètement démesuré. Jamais on ne pose une telle question. C'est - c'est - c'est introuvable de trouver - de trouver une telle question sur un affidavit.

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Je peux aller à la question 93 qui est à la page 30 de - de la charte.

LE TRIBUNAL: Question....

M. RANCOURT: Alors c'était la question 93.

"Ms. Gervais, in December of 2008 or prior did you ever express concern in any document that Joanne St. Lewis did not meet with you prior to the public release of her evaluation report at the end of November, 2008?"

Okay. Ça c'est très intéressant comme question parce que ça tourne la chronologie à l'envers. Si madame St. Lewis a écrit son rapport sans consulter madame Gervais, en quoi - et sans que madame Gervais sache même qu'elle est en train d'écrire un rapport, comment est-ce que madame Gervais peut se plaindre de ne pas avoir été consultée? Elle ne peut pas. Elle n'est pas au courant que madame Ger - que madame St. Lewis est en train d'écrire un contre-rapport. Elle n'a pas été mis au courant excepté quand ce rapport a été publié. Et ce n'est qu'après la publication de ce rapport que madame Gervais est devenue consciente qu'il y avait eu un tel rapport. Il n'y a pas de point de critiquer qu'on a pas été - il n'y a pas de - il n'y a plus de - il n'y a plus de raison de critiquer, il n'y a plus rien à faire à ce moment-là. Alors le fait qu'elle ne s'est pas plaint de quelque chose je vois mal comment ce genre d'évidence négative peut être pertinente. Pour moi c'est pas pertinent du tout.

Je passe à la page 34 à la question 113.

"I'm talking now prior to November 25th, 2008, not 2009, November 25th, 2008, did anyone at U of O ask you for access to the data you relied on in your report?"

5
Là ça c'est un point très important, Monsieur le Juge, parce que monsieur Dearden a fait des soumissions assez longues sur ce point-là et sur cette question-là. Et entre autre monsieur Dearden s'est référé à son onglet numéro huit. Vous voyez dans son avis de motion il s'est référé à l'onglet numéro huit, vous vous souvenez de ça.

10
LE TRIBUNAL: Il manque un courriel. Il manque une page de courriel, c'est ça?

15
M. RANCOURT: Oui. Si vous regardez cet onglet-là, Monsieur le Juge, vous allez remarquer que madame St. Lewis ne fait pas partie des personnes qui reçoivent ce courriel. Elle n'est pas du tout impliquée dans cette discussion-là. Et j'irais même plus loin, l'université a dit dans les documents qui ont été rendu public, qu'ils voulaient un rapport indépendant du professeur St. Lewis que - on ne devait pas avoir des discussions directes avec madame St. Lewis sauf par l'intermédiaire de la personne contacte qui est monsieur Robert Major, et donc ce courriel de monsieur Allan Roch (ph) n'est pas du tout une suggestion que madame St. Lewis va -
25
devrait communiquer avec madame Gervais comme monsieur Dearden a essayé de le sous-entendre. Ça n'a rien à voir avec ça. C'est une suggestion que monsieur Robert Major contacte madame Gervais; ce
30
qu'il a fait. Il a écrit à madame Gervais, ce

document-là est en évidence. Donc ce courriel que monsieur Dearden a beaucoup discuté, il a voulu suggérer que l'administration était en train de suggérer à madame St. Lewis qu'elle obtienne ces données, mais je vois mal - je vois mal comment ça pouvait être ça, puisque madame St. Lewis faisait même pas partie de la discussion et que c'est monsieur...qui a fini par demander les données. Et seulement après, longtemps après que le rapport critique de madame St. Lewis avait été publié, pas avant. Pas avant. Après.

Et donc c'est encore une exemple d'expédition de pêche, cette question centrale et toutes les questions semblable qui s'en suivent.

Je passe rapidement à la page 39, la question 134.

"Why are you swearing this affidavit, Mrs. Gervais?"

Je vous - je pose la question rhétorique, Monsieur le Juge, est-ce qu'on a le droit dans une motion de demander à un affiant pourquoi vous avez produit cet affidavit? Ça me semble une question déraisonnable, ça tombe carrément dans ce qu'on appelle « litigation privilege » et c'est une question qui ne doit pas être admis. Et toutes les questions de ce genre-là dans la section K de monsieur Dearden sont de ce type-là.

5 Ça c'était les questions que je voulais adresser
spécifiquement qui montrent des exemples, mais on
peut voir que toutes les questions sont de cet
ordre-là. Toutes les questions sont détachées de
l'évidence. Quelle est l'évidence? Quelle est
l'évidence? L'évidence c'est que madame Gervais a
prêté serment qu'elle n'avais jamais discuté ou
rencontré à propos de son rapport madame St. Lewis
avant que madame St. Lewis produise son rapport. Ça
10 c'est l'évidence. Est-ce que cette évidence a été
mise en cause par des questions pertinentes? Non.
On veut simplement attaquer la crédibilité pour que
cette évidence soit annulée sur un prétexte de
crédibilité.

15 L'autre morceau d'évidence c'est une évidence ferme,
c'est un document - et je vous amène à la page 53 de
l'avis de motion de mon ami monsieur Dearden. Ça
c'est le document ferme. Ça c'est l'autre morceau
20 d'évidence.

LE TRIBUNAL: Ça c'est quel....

25 M. RANCOURT: Là je suis dans l'avis de motion de
monsieur Dearden à la page 53. Est-ce que la
plaignante ou monsieur Dearden sont en train de dire
que ce n'est pas un vrai courriel? Je ne les ai pas
entendu dire ça. C'est un courriel ferme. Monsieur
Dearden prétend que j'aurais du soumettre ce
courriel dans mes découvertes. Je ne suis pas nommé
dans ce courriel. Je n'ai jamais reçu ce courriel.
30 Je n'ai pas ce courriel et je n'avais pas ce
courriel. Je l'ai reçu dans l'affidavit de madame
Gervais. Sa suggestion que j'aurais du le produire

montre qu'il essaye d'utiliser cette motion pour une découverte étendue. Il veut élargir la motion pour faire des découvertes. Mais si on regarde - si on regarde ce courriel, la première phrase de madame St. Lewis elle dit, « Hello Mireille. »

Et elle dit,

"I have been remiss in not introducing myself before this."

Pourquoi est-ce qu'elle dirait une telle chose si elle n'était pas convaincu qu'elle n'avait pas rencontré madame Gervais pour parler de son rapport avant cette date du 23 septembre, 2009, longtemps après la date du rapport de madame St. Lewis, qui était, je crois, le 15 novembre? Pourquoi est-ce qu'elle aurait dit ça? Et est-ce que cette question a été posée à madame Gervais? Jamais. Monsieur Dearden n'a pas dit « Mais pourquoi est-ce qu'elle aurait dit ça vous pensez? Qu'est-ce que ça voulait dire cette phrase? » Il l'a pas - il l'a pas questionné sur cette phrase, pas du tout. Mais ce qu'il veut faire - il veut annuler ce document sous prétexte que l'affiante n'est pas crédible.

L'affiante qui est directeur du centre d'appel pour le syndicat des étudiants à l'Université d'Ottawa depuis cinq ans, qui - qui a un comportement professionnel, des grandes responsabilités de - de secret professionnel, voyant des centaines de clients, qui est - qui est impliquée à défendre des droits des - des - des étudiants depuis longue date,

il veut attaquer la crédibilité de cette affiante pour annuler ces données qu'il trouve gênant. Et moi j'ai besoin de ces données-là pour montrer que je dois examiner sur cette question-là de ce meeting et quand il a eu lieu, et les questions naturelles qui vont en suivre.

Je vais juste résumer une chose.

MR. DEARDEN: Your Honour, Mr. Rancourt started at 2:25.

LE TRIBUNAL: Donc cinq minutes, max.

M. RANCOURT: Cinq minutes.

LE TRIBUNAL: Trois minutes. Trois minutes. Vous êtes quasiment à la fin je crois?

M. RANCOURT: Oui, oui. Je suis presque à la fin.

LE TRIBUNAL: Bon.

M. RANCOURT: Alors je prends les mots de monsieur Dearden (sic), parce que je - j'admet avoir volé ses mots. Dans la - pour terminer cette - ma discussion, le paragraphe 34 de mon factum. Alors je trouve que monsieur Doody a une façon très percutante de dire les choses, et il a dit essentiellement....

LE TRIBUNAL: Monsieur Doody ou monsieur Dearden?

M. RANCOURT: Non, Doody.

LE TRIBUNAL: Doody?

M. RANCOURT: Oui, parce que dans la motion pour champartie il y a eu...

LE TRIBUNAL: Oui.

M. RANCOURT: ...les mêmes arguments, il y avait des refus, et cetera, et j'ai repris les mêmes arguments.

LE TRIBUNAL: Oui.

M. RANCOURT: Et donc il a dit,

5 "Rather than see - is determined by an
 examination of the issues raised on the motion
 and by review of the affidavits filed in support
 and in response, however a party cannot broaden
 the scope of examinations beyond what is
 required to determine the issues in the motion."

10 C'est au moins en partie ce qu'il a dit. Et
 monsieur Doody a aussi dit - ah, ça je l'ai déjà lu.
 Je veux aussi dire que toutes les questions que
 monsieur Dearden a posé, qui avaient comme intention
 de tester la véracité de ce qui était dans
 l'affidavit, ont été répondues. Et ça vous pouvez
15 voir le « transcript », c'est très clair.

20 Alors je demande que la Cour - l'ordre que je
 demande c'est que la Cour reconnaisse que la
 jurisprudence pertinente pour un affiant est
 différente que la jurisprudence pour un témoin dans
 un procès et est différente d'un expert - d'un
 expert qui est mis de l'avant. Et que la
 jurisprudence - c'est clair qu'on doit se
 contraindre à tester la crédibilité des faits qui
25 sont présentés, pas de la personne elle-même. La
 crédibilité des faits, est-ce que c'est vrai qu'il
 ya eu ce courriel? Est-ce que c'est vrai que vous
 n'avez pas vu madame St. Lewis avant telle date?
 C'est ça les faits. La crédibilité de ces faits-là,
30 pas la crédibilité de la personne qui ferait en
 sorte qu'on ne croirait pas les faits. Ça c'est une
 autre question et ça c'est des questions qui vont

uniquement à la crédibilité de la personne et qui ne sont pas permises quand on fait des examens de ce type-là. C'est tout, Monsieur le Juge.

LE TRIBUNAL: Merci. On va prendre - short reply?

MR. DEARDEN: I wondered if I could reply, Your Honour before we do the break?

THE COURT: Okay. Like I'm wondering if we've almost done the second motion as well, the third motion? Essentially - la motion de monsieur Rancourt to re-examine Ms. St. Lewis. It's the same; it's the flip side to this motion really. He wants to examine Ms. St. Lewis again about this meeting.

M. RANCOURT: Non, il y a beaucoup plus de questions que ça dans les refus. Dans....

LE TRIBUNAL: Plus que....

M. RANCOURT: Dans la motion plus large sur les découvertes...

LE TRIBUNAL: Oui.

M. RANCOURT: ...il y a beaucoup de refus. Ça c'est un des refus.

LE TRIBUNAL: Ça c'est juste un?

M. RANCOURT: Ça c'est une des questions.

LE TRIBUNAL: Juste une des questions.

M. RANCOURT: Oui, ça c'est juste....

THE COURT: So there's more to it than....

M. RANCOURT: Oui, oui.

LE TRIBUNAL: Okay.

MR. DEARDEN: Yes, this is a standalone discreet issue within his refusal...

THE COURT: Okay.

MR. DEARDEN: ...motion on examination for discovery.
Does Your Honour want to take a break and hear from
me later?

THE COURT: Well, how long are you thinking?

MR. DEARDEN: Three minutes.

THE COURT: Okay, let's do it.

M. RANCOURT: Moi je voulais aller aux toilettes,
mais si - si c'est trois minutes....

LE TRIBUNAL: C'est trois minutes.

MR. DEARDEN: First all, Your Honour...

THE COURT: Unless there's an emergency in
courtroom.

MR. DEARDEN: ...there have been several references
by Mr. Rancourt about submissions Mr. Doody made and
Justice Beaudoin accepted that aren't ringing, I'm
not going to say true but I'm not recollecting what
he's submitting to you there. So I'm just putting
that on the record that some of what he was making
submissions on supposedly Mr. Doody got away with,
he just doing that here.

THE COURT: He's being cited as an authority.

MR. DEARDEN: Well, case law is the authority. And
in terms of the Caputo passages that my friend drew
your attention - Mr. Rancourt drew your attention
to, let's not - first of all you have the law that
I've cited to you this morning and there are going
to be further submissions on what the law is. It's
trite, in my respectful submission that you can test
the credibility of the deponent's evidence and that
includes the deponent of course, what's the source;
who's giving it. That whole Gervais affidavit, Your
Honour, disputes the credibility of Professor St.

5 Lewis' testimony at the examination for discovery on
the date of the meeting. It's all about that
affidavit in the submissions that Mr. Rancourt's
making is all about credibility. So of course you
can test the credibility of Ms. Gervais on what she
is disputing the date of the meeting. But he even
takes it further, Your Honour. Mr. Rancourt takes
it further just talk about repeated false sworn
statements. He's not just saying it's not credible,
10 the recollection of Professor St. Lewis, he's saying
she made false sworn statements which is the
equivalent of perjury or lying. And if there's any
situation that cries out to be able to test the
veracity of the affidavit that's being relied on for
15 those accusations, this would be the case.

Now, he says, Your Honour - I'm sorry, Mr. Rancourt
describes my request for drafts of this affidavit as
a fishing expedition. Well, we have experience with
20 Mr. Rancourt and Mr. Claude Lamontagne, another
professor at the University of Ottawa, where they
exchanged a number of drafts. Mr. Rancourt wrote
the first draft, Mr. Rancourt suggested edits and
additions and deletions to what Mr. Rancourt - or
25 Mr. Lamontagne was swearing to and that's what I'm
getting at here.

M. RANCOURT: Je m'objecte, Monsieur le Juge. Ce
n'est pas - ce n'est pas dans le record et ce n'est
pas une bonne caractérisation des faits.

30 J'aimerais....

THE COURT: I think we have the same rules. If it's
not in the record before me....

MR. DEARDEN: Well, why - okay, let me put it this way.

M. RANCOURT: J'aimerais vous dire que vous ignorez...

MR. DEARDEN: Let me put it this way...

M. RANCOURT: ...ce commentaire.

MR. DEARDEN: Let me put it this way, if Mr. Rancourt wrote the first draft, if Mr. Rancourt was suggesting edits, deletions in back and forth communications with Ms. Gervais, that certainly goes to how much weight one would give that affidavit if he is involved in its writing and in its content.

And then he claims litigation privilege with respect to his communications with Ms. Gervais. Ms. Gervais is a witness Your Honour, there is no property in a witness. There is absolutely no litigation privilege with respect to counsel's dealings with a witness. None. She's not a party. There's no property in a witness and that's all she is. And you have the case that I referred to that one can impeach the credibility of a witness that shows bias for one of the parties and that's what these questions are directed at.

And lastly, Your Honour, dealing with that freedom of information package of documents found at tab eight that are incomplete and are selective and we don't have the complete picture in what Ms. Gervais has published in her article and what Mr. Rancourt published in his article. We need the rest of the story, Your Honour, because what requests for

5 information were made to Ms. Gervais? We know that
University of Ottawa made a request from that
partial email we see from President Roch and we know
that the university was supposed to get a response
to that report in the back - the last page of that
report and that response was Professor St. Lewis'
evaluation. So what were the communications that
went on that aren't completely included in tab eight
is a highly relevant piece of evidence to know what
10 was done in that time period with respect to this
report and Ms. Gervais. I won't repeat the
paragraphs in the statement of claim and the reply
but we know that it's pleaded that a request for
data was made. President Roch's email clearly says
that they asked her and she didn't produce them but
we don't have the rest of what he said and we should
have it. We should have the complete story. So
that is my reply Your Honour. Thanks.

15 M. RANCOURT: J'aimerais faire une réponse. Monsieur
Dearden a eu droit à une réponse sur une réponse ce
matin. J'aimerais en faire une très courte, deux
minutes.

MR. DEARDEN: No, no. Enough. Enough.

20 M. RANCOURT: Deux minutes. Deux minutes, très,
très, très pointues.

25 LE TRIBUNAL: On a pas vraiment de réponse à des
réponses.

M. RANCOURT: Bien, monsieur Dearden a eu droit à ça
ce matin.

30 LE TRIBUNAL: Non, s'il a soulevé ou si moi j'ai posé
des questions à monsieur Dearden qui a introduit un
autre sujet, peut-être, mais je pense que j'ai....

M. RANCOURT: Il a soulevé une chose nouvelle à laquelle j'aimerais répondre.

LE TRIBUNAL: C'est quoi?

M. RANCOURT: Ce document qu'il dit qu'il manque une page dans le courriel.

LE TRIBUNAL: Oui.

M. RANCOURT: C'est des documents - il veut des documents que tient madame Gervais.

LE TRIBUNAL: Oui.

M. RANCOURT: Ces documents ont été obtenu par une demande d'accès à l'information.

LE TRIBUNAL: Oui.

M. RANCOURT: Monsieur Dearden est libre de faire exactement la même demande d'accès à l'information, il aura tous les mêmes documents, et je lui ai déjà dit ça quand qu'on a fait les découvertes. Il préfère étendre cette motion pour faire des découvertes, il faut nous embêter. Il - il peut les avoir immédiatement ces documents-là, et il le sait très bien. C'est des documents dans ce sens-là qui sont accessibles publiquement. Mais plutôt il veut forcer, il veut obliger madame Gervais à donner les documents qu'elle a dans sa possession. Un affiant n'est pas obligé de donner des documents qu'il a dans sa possession.

THE COURT: Okay. Do you want to reply to the reply?

MR. DEARDEN: It's not worthy of a reply. Thanks, Your Honour.

THE COURT: Okay. It's five to four, what are your thoughts?

5 MR. DEARDEN: Well, I know, Your Honour, that we're not going to get to my motion to compel Mr. Rancourt to answer questions on his examination for discovery but I think we should use the time that we've got to get Mr. Rancourt started with his motion for further answers from Professor St. Lewis' examination for discovery. Let's get going. We've got an hour and then I don't know Your Honour if....

10 THE COURT: Well let's take 10 minutes. We'll take 10 minutes then and we'll start your....

M. RANCOURT: Non, mais attendez, vous avez demandé que l'on propose - moi j'aimerais répondre par rapport à comment on peut mieux utiliser le temps.

15 LE TRIBUNAL: Oui.

20 M. RANCOURT: Alors voici, on a pas encore une décision sur la question de l'affidavit Gervais qui est nécessaire dans mon avis de motion pour les refus. Donc il n'est pas logique qu'on poursuit avec ma - mon avis de motion sans avoir une décision sur la question de l'affidavit de Mireille Gervais; ça serait préjudiciable à mon égard. Donc si on doit commencer une motion aujourd'hui, il serait préférable de commencer l'autre motion, c'est-à-dire la motion qui n'implique pas madame Gervais.

25 MR. DEARDEN: No, Your Honour?

THE COURT: What I'm talking about....

30 MR. DEARDEN: He tried to do this the last case conference. This issue with Ms. Gervais is a standalone issue.

THE COURT: A separate issue.

MR. DEARDEN: And there are all the other questions that he says should be answered that are in his

5 refusals motion have nothing to do with your ruling
on these refusals and that's why I say they're
standalone. He tried to do this is the last case
conference where he wants to delay and he doesn't
want his refusal motion to go so we can never get on
with examinations for discovery and get a trial
date. There's absolutely no reason why he can't
proceed right now. It is shameful what he's doing
to delay.

10 M. RANCOURT: Je crois - c'est une logique pure et
simple, Monsieur le Juge. Je dois connaître la
réponse de...

MR. DEARDEN: No, he doesn't.

M. RANCOURT: ...mon affidavit....

15 THE COURT: No, no, no, no, I don't think so. No.

M. RANCOURT: Dans la motion pour les refus.

LE TRIBUNAL: Non.

M. RANCOURT: C'est ma motion pour les refus.

LE TRIBUNAL: Mais c'est votre motion.

20 M. RANCOURT: Oui.

LE TRIBUNAL: Donc - mais on va prendre 10 minutes de
toute façon, puis là on va - on va procéder avec
qu'est-ce qu'on peut sur la question de votre refus
contre madame St. Lewis. So I'm not sure if we'll
25 complete.

R E C E S S

U P O N R E S U M I N G

30 THE COURT: Now, I'm just wondering about the - it's
a quarter after four. Mr. Rancourt will take what,
an hour?

M. RANCOURT: Regardez l'épaisseur de mes documents...

LE TRIBUNAL: Ça va prendre une heure?

M. RANCOURT: ...Monsieur le Juge.

LE TRIBUNAL: Est-ce que c'est précis? We're going to be splitting it in any event. I don't believe in sitting late. I don't get any better. Counsel don't generally get any better. And the parties don't get any better in the lateness of the day.

M. RANCOURT: Mais je peux vous dire personnellement, Monsieur le Juge, je suis personnellement très fatigué et je vais pas - moi aussi je vais pas m'améliorer.

THE COURT: But how long? Is it worthwhile to split it into two hands? It's usually better to hear argument and counter argument at the same time.

MR. DEARDEN: Your Honour, you said we would be two hours on each of the...

THE COURT: Right.

MR. DEARDEN: ...examination for discovery motions so....

THE COURT: An hour.

MR. DEARDEN: So it would be an hour, that would take it to 5:15 and then we'd be split.

THE COURT: Do you think it's advisable to split a motion on an issue?

MR. DEARDEN: I'm getting the signal, Your Honour, you'd prefer we didn't.

THE COURT: Wouldn't it better for me to hear you know argument, counter argument? Let's set a day for the other two.

MR. DEARDEN: Let's get Mr. Labacki on the line...

THE COURT: Yes, do that. I think that's the advisable thing.

MR. DEARDEN: ...and get a new date. But Your Honour it will be two hours max for both of those motions.

THE COURT: Two hours. Two hours. It's close to a guarantee. C'est une garantie. Je te donne ma garantie.

M. RANCOURT: Monsieur le Juge, regardez ce qui s'est passé aujourd'hui. On avait deux petites motions...

THE COURT: Well, we had....

M. RANCOURT: ...et ça pris toute la journée.

THE COURT: Well, I don't know if they're little motions or not. I mean - je suis pas sûr - c'est pas sûr....

M. RANCOURT: Bien compare a - comparé a celles-ci, c'était des petites.

THE COURT: Okay. Well, we're going to follow the same targets. We've got two hours, two hours. That is a - that's a day. Deux heures, deux heures, quatre heures avec un peu de....

M. RANCOURT: C'est notre cible comme vous dites.

LE TRIBUNAL: Cible.

M. RANCOURT: C'est notre cible, notre target.

THE COURT: Target. But - so could we call - Mr. Registrar, call Mr. Labacki?

REGISTRAR OF THE COURT: Yes. For you specifically?

THE COURT: For me specifically.

MR. DEARDEN: So preferably as soon as possible, Your Honour, while this is still somewhat in our head.

THE COURT: Right.

REGISTRAR OF THE COURT: How soon would you like it?

THE COURT: As soon as counsel are available.

CONVERSATION WITH MR. LABACKI ON SPEAKER PHONE - NOT TRANSCRIBED

5

MR. DEARDEN: Your Honour, I want this heard the 27th, 28th, 29th of November. We're not putting this off until the first week of December. This is ludicrous. If the first available date is that week and I'm here that entire week.

10

M. RANCOURT: Est-ce que monsieur Dearden est disponible la semaine du 3 décembre, oui ou non?

MR. DEARDEN: What about you?

M. RANCOURT: Je viens de vous dire.

15

THE COURT: He says he's not available on that week.

MR. DEARDEN: But why? I don't believe that, Your Honour, that he should not be available for one day that entire week. I don't believe it.

20

THE COURT: Okay. Are you available the week of the 4th or the 3rd, the 4th, would be a Tuesday? Is that a....

M. RANCOURT: La semaine du 3....

MR. DEARDEN: Well, we know why....

25

THE COURT: Or is that - because we have a date coming up for the Champerty motion in....

MR. DEARDEN: Yes and that's why it's important to - let's get this liable examination...

THE COURT: That's on....

30

MR. DEARDEN: ...for discoveries out of the way the last week of November.

THE COURT: When's the Champerty motion?

M. RANCOURT: Le - le - l'entente devant vous c'est le...

MR. DEARDEN: December 13th.

M. RANCOURT: ...13 décembre.

5

LE TRIBUNAL: Le 13?

M. RANCOURT: Oui.

THE COURT: Do you have that - Mr - okay, yes, I have it.

TRIAL COORDINATOR: December 13th, Your Honour?

10

THE COURT: December 13th.

TRIAL COORDINATOR: Yes, the champerty motion, we...Your Honour.

THE COURT: Yes.

TRIAL COORDINATOR: On the 13th of December.

15

THE COURT: Yes, okay, that's fine.

MR. DEARDEN: Your Honour, with respect, we have to get on with this. He can make himself available one of those days the week of November 26th.

20

M. RANCOURT: Je demanderais que monsieur Dearden soit raisonnable, il est apparemment disponible la semaine du 3 décembre, je suis disponible la semaine du 3 décembre, on peut choisir une date.

THE COURT: What about the 29th?

MR. DEARDEN: No, he's not going to do that.

25

THE COURT: What about the 29th, are you available the 29th of November? That would be a Thursday.

M. RANCOURT: Je vous signale que ça c'est le jour avant - non, je ne suis pas disponible.

MR. DEARDEN: Why? Why?

30

M. RANCOURT: Je réponds pas à vos questions, monsieur Dearden.

MR. DEARDEN: Does he have a doctor's appointment?

THE COURT: Okay, just a second, let me - so the -
what about the 28th? Le 28?

M. RANCOURT: Monsieur le Juge, je suis disponible la
semaine du 3 décembre.

LE TRIBUNAL: Okay. Mais vous êtes pas disponible....

MR. DEARDEN: No, he's not answering you, Your
Honour.

LE TRIBUNAL: Are you - est-ce que - vous êtes pas
disponible la semaine du tout ou c'est quoi - c'est
pour quelle raison d'abord?

M. RANCOURT: Le 30....

LE TRIBUNAL: Oui.

M. RANCOURT: Le 30 novembre je dois rendre tous mes
documents pour la motion champartie.

LE TRIBUNAL: Oui. Donc selon vous - vous êtes en
train de préparer votre argument.

M. RANCOURT: Donc la journée - la journée est
entièrement prise sur préparer les documents, servir
des documents, aller à la Cour, servir les - les -
les deux parties.

LE TRIBUNAL: Le 27? 27 novembre, est-ce que ça vous
donne du temps?

MR. DEARDEN: See, Your Honour, why he's saying that
he's not available....

M. RANCOURT: Je trouve ça - je trouve ça....

MR. DEARDEN: Just a second, please. Just a second,
please.

M. RANCOURT: ...très dérangement. Je ne comprends
pas pourquoi....

MR. DEARDEN: He's saying he's not available because
he has his motion record due November 30th in

5 Champerty but you'll recall that Mr. Doody and I made the concession that we would only get a week to have to put ours in on December 7th. So if I'm arguing again these two - these motions and I can just imagine what's coming to me on November 30th in Champerty, we're really jammed. So the only reason - so maybe - do we have an earlier....

LE TRIBUNAL: Le 26 - 26 - le 26? Le 26.

M. RANCOURT: Alors vous voyez...

10 MR. DEARDEN: Yes, 26.

M. RANCOURT: Monsieur Dearden explique....

THE COURT: What about the....

M. RANCOURT: ...qu'il est....

LE TRIBUNAL: Non, non.

15 M. RANCOURT: ...very jammed. Moi aussi je suis very jammed. Alors une solution ça serait de faire ceci....

THE COURT: On est au mois d'octobre.

MR. DEARDEN: It's a month away.

20 THE COURT: But we're in - on est au mois d'octobre.

M. RANCOURT: C'est lui qui fait cet argument, Monsieur le Juge.

LE TRIBUNAL: Non, non, mais mettons le 26 novembre. Ça vous donne des journées par après parce que vous - les parties sont....

25 M. RANCOURT: Monsieur le Juge, est-ce qu'il y a une raison qu'on peut pas le faire la semaine du 3 décembre?

MR. DEARDEN: Yes, yes, because...

30 LE TRIBUNAL: Parce que lui....

MR. DEAREN; ...we have to have our Champerty motion material to respond to your motion material in five days.

LE TRIBUNAL: Lui il a juste sept jours. Lui il a juste sept jours, parce que - vous avez déjà 30 jours.

M. RANCOURT: Mais je suis prêt à lui donner plus de temps. Il peut....

THE COURT: No, but - but we're coming up to the - I'm not going to adjourn the Champerty.

MR. DEARDEN: Unbelievable.

THE COURT: What about the 26th, le 26. Ça ça vous donne encore des journées puis t'as encore le mois - tout le mois de novembre.

MR. DEARDEN: I'm available November 26th, Your Honour.

THE COURT: That's a Monday, which is not generally a good day, but - a Monday is a Monday.

MR. DEARDEN: Yes.

M. RANCOURT: J'ai mal compris pourquoi on peut pas le faire la semaine du 3 décembre.

LE TRIBUNAL: Le 3 décembre monsieur Dearden - il faut qu'il réponde à vos matériaux, le 30 novembre, c'est dû, vos documents, c'est une date - eux ils ont juste sept jours à répondre, donc....

MR. DEARDEN: These motions, Your Honour, were supposed to be argued on July 24th.

LE TRIBUNAL: Donc c'est des choses qui sont - vous êtes prêt....

M. RANCOURT: Ce n'est pas pertinent, il - il répète ça comme un perroquet. Ce n'est pas pertinent.

MR. DEARDEN: No, he thinks - he thinks it's not pertinent, Your Honour?

M. RANCOURT: On fait le mieux qu'on peut.

MR. DEARDEN: Joanne St. Lewis' reputation is being destroyed every day until we get a trial and have an attempt to get his defamatory statements down.

LE TRIBUNAL: Le 26, 27 - le 26?

MR. DEARDEN: Yes.

LE TRIBUNAL: What about le 26 - ça vous donne du temps.

MR. DEARDEN: Yes, November 26th.

LE TRIBUNAL: T'as encore des journées avant le 30.

M. RANCOURT: Ça me donne pas du temps parce que j'ai - juste pour vous donner une horaire - une idée de mon horaire.

LE TRIBUNAL: Oui.

M. RANCOURT: J'ai 10 jours pour répondre aux documents que monsieur Dearden m'a donné en retard, après que j'ai soumis les miens. Il m'a donné ça hier. J'ai - je fais une motion pour aller en appel qui doit être vu cette semaine. Il y a trois motions pour aller en appel qui doivent être entendues devant un autre juge le 15 novembre.

LE TRIBUNAL: Mais ça c'est passé.

M. RANCOURT: C'est le 15 novembre.

LE TRIBUNAL: Oui, mais c'est - ça sera passé, on est au....

M. RANCOURT: Et....

LE TRIBUNAL: Au 26.

M. RANCOURT: Et donc ça laisse juste les jours après ça et les jours après ça je dois préparer mes matériaux pour champartie qui est la plus grosse

motion que je n'ai jamais fait. Je suis sans aide.
Je ne suis pas un avocat, contrairement à monsieur
Dearden, je n'ai pas...

MR. DEARDEN: That is true.

M. RANCOURT: ...je n'ai pas une équipe d'avocats qui
travaillent pour moi et ses notaires et de -
livreurs de documents et de tout ce que vous voulez,
j'ai rien de tout ça, et ça - et je vous propose la
semaine du 3 décembre.

MR. DEARDEN: Your Honour....

M. RANCOURT: Et ça c'est - ça c'est....

MR. DEARDEN: We were supposed to argue these motions
today.

LE TRIBUNAL: Non, on est prêt - les deux vous êtes -
vous êtes prêt les deux pour ces motions. Vous êtes
deux - vous êtes déjà préparé pour cette motion.

M. RANCOURT: Ça prend une journée entière, minimum,
pour les - pour les débattre.

LE TRIBUNAL: Non - oui, non, non, je suis d'accord.
Je suis d'accord, mais vous êtes les deux, vous êtes
prêt déjà.

M. RANCOURT: Je peux vous affirmer, Monsieur le
Juge, que je ne suis pas prêt. Monsieur Dearden est
prêt, mais moi j'étais pas prêt parce que j'ai
jamais assez le temps, parce que vous nous - la Cour
m'impose des dates....

LE TRIBUNAL: Non, mais c'était - c'était - c'était
fixé pour le 24 de juillet, puis on est rendu au
mois d'octobre.

M. RANCOURT: Ça c'est le passé.

LE TRIBUNAL: Puis là on s'en va au mois de novembre.
Je pense que....

M. RANCOURT: Je pense qu'on parle d'une différence d'une semaine qui pourrait m'accommoder en tant que personne non-représentée.

5 LE TRIBUNAL: Oui. Non, mais ça - ça donne - ça tombe dans les sept jours des autres parties, donc - le 26, 27, c'est à vous - le 26 ça vous donne encore quatre jours avant le 30, si vous préférez le lundi.

10 M. RANCOURT: Je trouve - je trouve pas ça raisonnable personnellement, je suis à bout de mes énergies, mais si vous insistez, si vous me l'ordonnez, je serai là le 26.

LE TRIBUNAL: 26. Je vais fixer ça le 26 pour une continuation pour les deux autres requêtes. I don't know if Mr. Labacki's still there?

15 MR. LABACKI: Yes, Your Honour, I'm here.

THE COURT: Okay.

MR. DEARDEN: So November 26th, Mr. Labacki?

MR. LABACKI: So November 26th?

MR. DEARDEN: All day.

20 MR. LABACKI: All day. Not a problem, November 26th for a - what is - fixed to a motion?

MR. DEARDEN: Two refusals motions for examinations for discovery. One of the plaintiff, one of the defendant.

25 MR. LABACKI: No problem. The time estimate, one day?

MR. DEARDEN: Yes.

THE COURT: One day.

30 MR. LABACKI: No problem. Okay, have a good evening gentlemen.

THE COURT: Okay.

MR. DEARDEN: Your Honour, just a final housekeeping matter, did I - I think I ask you this, on the Gervais refusals motion will you - you'll say in your decision about costs?

THE COURT: Ten days, didn't we say 10 days each or something like that?

MR. DEARDEN: Okay.

M. RANCOURT: Est-ce que ça n'avait pas déjà été mentionné ou....

LE TRIBUNAL: Je crois qu'on l'avait déjà mentionné. Didn't we already mention that?

MR. DEARDEN: I thought we did but just as a housekeeping matter I wasn't sure so I just wanted to make sure that I wasn't supposed to hand you a cost outline today.

THE COURT: Okay, that's fine.

MR. DEARDEN: Thank you, Your Honour.

CONVERSATION WITH INTERPRETERS - NOT TRANSCRIBED

C O U R T A D J O U R N E D

FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Linda A. Lebeau, certify that this document is a true and accurate transcript of the recording of St. Lewis v. Rancourt the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario taken from Recording No. 0411-30-20121030 which has been certified in Form 1.

FEB 11 2013

Date

Linda A. Lebeau
Linda A. Lebeau

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

v.

DENIS RANCOURT

TRANSCRIPT OF PROCEEDINGS

BEFORE:

Mr. Justice Annis

APPEARANCES:

Mr. R. Dearden
Mr. D. Rancourt
Mr. P. Doody

for the Applicant
for the Respondent
for University of Ottawa

G. Boyer

Registrar
Reporter

Held at
Courtroom 36
161 Elgin
Ottawa, Ontario

Date
November 15, 2012

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--- Upon commencing at 10:05 a.m.

THE REGISTRAR: Oye, oye, oye, que toute personne qui a des affaires à soumettre au Juge de la Cour supérieure de Justice approche et elle sera entendue.

Anyone having business ... at the Superior Court of Justice stand now and you shall be heard.
Long live the Queen.

Please be seated. Veuillez vous asseoir.

M. RANCOURT: Monsieur le juge, il y a ---

LA COUR: Donnez-moi deux secondes, s'il vous plaît, pour que j'arrange mes affaires.

M. RANCOURT: Oui.

THE COURT: Good morning.

MR. DEARDEN: Good morning, Your Honour.

THE COURT: I think I know everybody here.
Somebody is standing up at the back there?

THE TRANSLATOR: Good morning, Your Honour.

MR. DEARDEN: They are the translators, sir.

THE COURT: Translators, yes. We need to swear you; don't we? All right.

DANIEL RENAUD, INTERPRÈTE, Sous affirmation solennelle

INTERPRETER RENAUD: For the record, Renaud, R-E-N-A-U-D; first initial 'D'.

MANUEL COSTA, INTERPRÈTE, Sous affirmation solennelle

INTERPRETER COSTA: Manuel Costa, C-O-S-T-A.

MR. DEARDEN: Your Honour, a housekeeping matter:

M. RANCOURT: Monsieur le juge, ---

MR. DEARDEN: --- the Translators couldn't get the booth to work. There's something wrong with

the booth so they -- they are going to translate for us but it's not going directly to the machine that records.

But we're going ahead with the transcript as is so we can get things going today.

Typically, their translation would be fed into ---

THE COURT: Yes. Yes.

MR. DEARDEN: Well, apparently, this Court isn't working that way today.

THE COURT: So we're going to rely upon what we hear, what we say and somehow it's going to be recorded then; is it?

MR. DEARDEN: That will be recorded. No issue for the transcript but ---

THE COURT: All right.

MR. DEARDEN: --- what the translators say won't be.

MR. DOODY: The transcript will be in the words that's spoken by counsel in the courtroom. In other words, the French will be typed in French and the English will be typed in English. Which is fine by Mr. Dearden and I.

THE COURT: All right.

M. RANCOURT: Alors, monsieur le juge, j'aimerais faire des soumissions par rapport à ce point technique.

Il y a un problème, c'est le suivant: À cause de cette situation technique unique, les membres du public -- et il y a des membres des médias qui sont ici -- n'ont pas accès à l'interprétation du français vers l'anglais, ce qui est assez rare.

Normalement, la salle permet ça et, donc, ça m'inquiète par rapport au principe de la Cour ouverte que les membres du public et les membres des médias n'ont pas accès à l'interprétation aujourd'hui.

C'est une préoccupation que je veux mettre devant la Cour. Je trouve ça -- personnellement, je trouve ça un -- un problème sérieux. Je préférerais que ça puisse être réparé.

LA COUR: Bon, bien, je comprends un peu difficilement cet aspect du problème vu que les avocats semblent être en mesure de le suivre.

La traduction est donc pour voir à ce que on n'a pas les mêmes facilités pour les membres qui sont ici avec des -- des écouteurs et ces genres de choses.

M. RANCOURT: On m'informe, monsieur le juge, qu'il n'y a que deux écouteurs et qui sont occupés par les Maîtres qui sont là devant vous et que, pour cette salle, les écouteurs qui normalement sont dans les bancs ne fonctionnent pas pour des raisons techniques qu'on a expliquées au début.

Et donc -- et, en plus, il n'y a pas de modules qui permettent l'interprétation pour la personne individuelle. Il y en n'a que deux, deux de ces modules.

LA COUR: M'hm.

MR. DEARDEN: Your Honour, if I could just briefly address this?

In my submission, what Mr. Rancourt is trying to do, which he does literally at every motion we

5 have, is try to get an adjournment, try to delay,
try to have things take so long in the morning
before we actually can get on with the motions
that are scheduled for the day that we don't get
them done.

The open court principle, Your Honour, I know
one or two things about it. I've never heard of
the case where members of the public are entitled
to translation devices. They aren't.

10 **THE COURT:** That's actually not my problem.

My concern is that -- and I just can't
remember. My recollection is that there's --
there's a requirement to record both languages
when they are being simultaneously translated for
15 the purpose of the transcript going forward.
That's what my concern is.

Now, if that is being done here -- and it
sounds like it will be done -- but I just want to
make sure that the -- that both versions are --
20 go down because I believe that's the rule that
they follow here.

MR. DOODY: Your Honour, I don't have the
Regulation in front of me but we can find it for
you.

25 My understanding, my recollection is that the
Regulation provides that the transcript of
proceedings in which the requisition has been
filed for a ---

THE COURT: Yes.

30 **MR. DOODY:** --- bilingual proceedings -- and this
is one of those. Mr. Rancourt has filed a
requisition for the bilingual proceeding.

The Regulation says that the transcript shall be only in the language that is spoken unless there is an order obtained requiring a bilingual transcript.

Now, in this case, my friend Mr. Dearden sought and obtained an order requiring a bilingual transcript but that order was sought and, in fact, issued by Justice Beaudoin on April the 2nd of this year and -- and the order reads -- and I apologize for my severe inadequacies in the French language but the order reads:

“La Cour ordonne en vertu de l’article 11 du Règlement 53/1 que toute transcription ou (inaudible) ou l’interprétation des déclarations faites en français pendant les interrogatoires préalables extrajudiciaires même ont (inaudible) être déposée dans le cadre d’une présente affaire, la Cour ordonne lorsqu’il y a traduction ou interprétation pendant les interrogatoires préalables extrajudiciaires même dans le cadre de la présente action (inaudible) que la version officielle de toute déclaration faite par un témoin, par un avocat ou par le Défendeur est celle donnée dans la langue originale. »

So. in fact, that speaks only ---

THE COURT: Okay.

MR. DOODY: --- to extrajudicial interrogatories; in other words, examinations, cross-examinations of the Court.

THE COURT: Yes, all right.

MR. DOODY: So my -- my understanding of the law is that without an order requiring both languages to appear in the transcript, the transcript is only in the language that's spoken.

And, certainly, Mr. Dearden and I, for the purpose of insuring that this matter moves forward today are prepared to proceed on that basis.

In fact, some of the transcripts that have been filed are only in the language that was spoken because of earlier difficulties with translation.

And our intent is to move on because, as Mr. Dearden has indicated, on every one -- perhaps not every one -- my recollection is every single appearance, Mr. Rancourt has started the Court proceeding by some attempt to adjourn it and this is one of -- more than one you'll hear today.

THE COURT: M'hm.

M. RANCOURT: Monsieur le juge?

LA COUR: Oui?

M. RANCOURT: J'ai des informations qui sont pertinentes par rapport à ceci.

L'interprète en chef m'a informé il y a quelques instants que, d'après lui, les règles de la Cour sont telles que, quand il y a une interprétation d'une langue à une autre, l'interprétation doit être sur l'enregistrement physique de la Cour.

Il m'a informé de ça. J'ai pas de connaissance directe de ce règlement mais il m'a informé de ce règlement.

Donc, je crois que votre premier souvenir, vous aviez raison, il y a un tel règlement.

C'était juste pour vous aider par rapport à ce que vous aviez dit tantôt.

MR. DEARDEN: No. No, there is no such rule, Your Honour. The Order was obtained to assist me that when I come to trial, I can read the translation from -- that is in English to the jury and, if there's a dispute over whether that translation is correct, the French version of those words prevails. That's it.

THE COURT: But it works in both directions.

MR. DEARDEN: Well, what -- all that's going to be recorded today ---

THE COURT: No, but I'm saying it works for both parties.

MR. DEARDEN: I'm not understanding.

THE COURT: Well, your need is matched by the other side's need.

MR. DOODY: Mr. Rancourt is not asking that what we say in English be translated. He's not required ---

THE COURT: Well, that is -- that is helpful, all right.

MR. DOODY: All of his pleadings are filed in French.

THE COURT: Yes. No, I've certainly noticed that.

MR. DOODY: And so the only request for translation was from the French language to the English language.

THE COURT: And I take it there is no solution,

ie, another courtroom?

They've looked for one and not found one?

M. RANCOURT: Par rapport à ce point ---

LA COUR: Non, juste --

Mr. Registrar -- I'm just addressing this to Mr. Registrar that question.

M. RANCOURT: Ah, d'accord. Excusez-moi.

THE COURT: What -- what's happened here?

I mean, I know we got off late ---

THE REGISTRAR: It's my understanding that there is no other courtroom that we can move to.

THE COURT: Have they asked for that?

THE REGISTRAR: I believe so. I believe the Supervisor has been asked and there are no other solutions.

THE COURT: All right.

All right ---

MR. DOODY: And, Your Honour, if I could just direct you to -- it's Section 11 -- 53.01 which if you have your blue book?

THE COURT: Yes.

MR. DOODY: If you have the 2013 version, it appears on page 197 under the heading "Transcript of oral evidence":

"Unless the Court orders otherwise, interpretation shall not be included in any transcript of oral evidence given at a hearing to which paragraph 3 of subsection 126.2 of the *Courts of Justice Act* applies."

And subsection 126.2 of the *Courts of Justice Act* set out the rules for a proceeding that is conducted as a bilingual proceeding which is one

of these.

So -- and there is no order that I'm aware of that speaks to bilingual transcripts in anything other than an examination out of court.

When I say "bilingual", I mean a transcript that includes the interpretation.

THE COURT: So I would have to rescind Justice Beaudoin's order, obviously.

Oh, well, it's just for out of court?

MR. DOODY: I believe Justice Beaudoin's order spoke only to out of court.

THE COURT: Could I -- could I borrow your copy there, ---

MR. DOODY: Certainly.

THE COURT: --- Mr. Doody, so I can see it. I know your French was excellent but ...

MR. DOODY: You'll be able to read it and understand it easier than you would by listening to me reading the French language, Your Honour.

THE COURT: I just think it's better to see something in writing, in any event.

(SHORT PAUSE/COURTE PAUSE)

LA COUR: Oui, alors ça ne s'applique que -- aux déclarations faites en français pendant les interrogatoires préalables extrajudiciaires menées en espèce. Donc, ça ne s'applique pas ici.

Monsieur, est-ce qu'on -- est-ce que je peux vous ---

M. RANCOURT: Monsieur le juge?

LA COUR: Oui?

M. RANCOURT: Ma compréhension c'est que il y a

une distinction à faire entre le procès-verbal -- le 'transcript -- et la langue qui doit apparaître là-dessus, d'après les règles de procédure.

Et une règle qui n'est pas dans les 'Civil Rules of Procedure' mais qui est par rapport à l'enregistrement physique de la Cour, c'est l'interprète en chef qui m'a informé de ça il y a quelques instants. On pourrait lui demander des précisions.

LA COUR: Mais, nous, on -- nous, on cherche un règlement. On ne se base pas sur ce que quelqu'un qui travaille ici dit.

Donc, on cherche le fondement juridique pour notre décision, donc, je peux pas inviter ce monsieur de venir ici. Ça dépend sur une règle de prendre une preuve sur une question comme ça. C'est -- c'est quelque chose qui devrait être trouvé dans les lois. C'est ça les règlements. C'est aussi simple que ça.

M. RANCOURT: Oui, je comprends, monsieur le juge.

Ma suggestion c'était qu'il connaît peut-être le règlement en question. Il pourrait nous pointer au règlement en question. C'était uniquement ça ma suggestion.

LA COUR: Bon, à ce moment, on peut l'inviter.

Si lui il peut nous signaler un règlement à regarder, je l'invite nous indiquer seulement pour me dire.

Donc, voulez-vous prendre deux secondes pour le rencontrer? Est-ce qu'il est juste en arrière

ici?

M. RANCOURT: Il est -- il est dans la salle d'interprétation.

LA COUR: Déjà?

M. RANCOURT: Oui.

LA COUR: Donc, si vous voulez, on va l'inviter de venir ici devant le Juge, s'il vous plaît?

(COURTE PAUSE/SHORT PAUSE)

THE INTERPRETER: Good morning, Your Honour.

THE COURT: You heard that discussion?

THE INTERPRETER: Yes, I actually was interpreting it, Your Honour.

What I was indicating to Mr. Rancourt is I was trying to comply -- the interpretation office was trying to comply with Justice Beaudoin's order that the interpretation be captured for the purposes of the transcript.

It has now come to my knowledge that it's only for extrajudicial appearances and I didn't know that it didn't apply to court ---

THE COURT: That's understandable. Thank you very much.

THE INTERPRETER: I don't know of any other regulation.

THE COURT: Thank you very much. Yes, thank you.

M. RANCOURT: Mais est-ce que je peux poser une question?

LA COUR: Non. Non, je crois que non.

(COURTE PAUSE/SHORT PAUSE)

MR. DOODY: Your Honour?

THE COURT: Let me just look at this. I want to vision that.

MR. DOODY: If I could direct your attention as well, Your Honour, to Tab 3 of subsection 126.2 of the *Courts of Justice Act* which links with the regular section?

THE COURT: Yes, that's what I was looking at to figure out 126.2 and I see that they've added 1, 2, 3 or 1 ---

MR. DOODY: Number 3 says:

"If the hearing that the party has specified is held without ..."

THE COURT: Where -- okay, just help me on that. Number 126.2 is -- hang on here.

MR. DOODY: Top of page 191, Your Honour, if you're ---

THE COURT: Yes, yes, okay, I'm all confused there -- on juries and all that. All right. I'm reading that very well.

Yes, 3, okay:

"If a hearing where the party has specified is held without jury or with a jury ... evidence given and submissions made in English or French will be received and recorded and transcribed in the language in which they given ..."

All right, that's the over-riding ---

MR. DOODY: And that makes ---

THE COURT: That's the over-riding rule. Voilà.

Donc, dans les circonstances, je suis satisfait que on rencontre les obligations des règles de procédures civiles concernant la langue.

En ce qui concerne le problème que les

5 membres -- l'auditoire ne peut pas -- ne sont pas en mesure de comprendre, bien, ça c'est dommage mais ça fait pas partie exprès de notre -- de nos règles juridiques. Donc, à ce moment, il va falloir qu'ils se débrouillent dans la -- dans la mesure possible.

Donc, on va -- on va de l'avant avec l'arrangement en place pour la transcription bilingue; o.k.?

10 Donc, ça c'est -- ça c'est mon -- mon ordonnance -- directives sur cette question-là.

Donc, ça c'est le premier point. Donc, est-ce que vous avez -- je sais que j'ai reçu une -- un "Revised Confirmation Motion" et, donc, vous voulez soulever des -- un deuxième point préalable, si je comprends bien?

15 **M. RANCOURT:** Oui. Merci, monsieur le juge.

Alors, premièrement, pour donner le -- le contexte précis, j'ai envoyé cette -- cette Notice révisée, cette Confirmation de Motion, aux autres parties. Ils m'ont répondu qu'ils allaient opposer ma demande d'ajournement.

20 **LA COUR:** Oui.

M. RANCOURT: Donc, jeudi matin, vous avez reçu ces réponses de la part des autres parties?

25 **LA COUR:** À vrai dire, tout ce que j'ai vu c'était -- j'ai pas lu ce qu'ils ont fait à part un très bref courriel de Maître Doody disant qu'il allait s'opposer. J'ai pas vu qu'il avait des -- des raisons -- des motifs en annexe.

30 Peut-être, de toute manière, je pense qu'on est en mesure de -- décider ça entre nous là.

M. RANCOURT: Oui. Oui.

LA COUR: Voilà.

M. RANCOURT: Et Monsieur Dearden a aussi envoyé une -- un tel courriel qui était plus long où il a l'habitude de -- de m'accuser de plein de choses mais ça c'est à côté de la question.

Mais je voudrais montrer ma réponse aux deux conseils pour que tout le monde soit informé.

LA COUR: Vous savez, c'est une -- c'est une question qui est souvent devant le Tribunal.

M. RANCOURT: Oui.

LA COUR: C'est bien agréable de recevoir tous les -- tous les soumissions ou argumentations par écrit mais je pense que je pourrais régler ces problèmes sans vraiment entendre -- lire ce qu'ils ont dit en avant. Je pense que je connais un peu comment -- ce que tout le monde va dire, donc ...

Et j'ai lu votre affaire et, donc, je suis près.

M. RANCOURT: Oui.

LA COUR: Si vous avez des choses à ajouter à ce que vous avez écrit -- bien, à vrai dire, vous signaler certains points mais ---

M. RANCOURT: D'accord.

LA COUR: Donc, allez de l'avant, si vous voulez.

M. RANCOURT: Oui.

J'aimerais juste préciser mon but précis en faisant cette demande.

LA COUR: Oui.

M. RANCOURT: Il est exprimé très clairement dans ce court courriel que j'ai envoyé aux autres

parties ---

LA COUR: Bon ---

M. RANCOURT: C'est simplement la chose ---

LA COUR: Lisez-le, donc.

M. RANCOURT: Oui, je le lis, donc:

« I advise you ... »

C'était en anglais.

LA COUR: Oui?

M. RANCOURT: Trois points:

« I advise you that I will request an adjournment on November 15th for the sole purpose of bringing a Recusal Motion in the normal way on notice according to the Rules of Procedure.

2. I advise you that I am prepared to proceed tomorrow on the original proceeding motions if fair trial circumstances can be assured by the Court.

3. I advise you that I'm also prepared to bring the Recusal Motion as a first matter at 10:00 a.m. tomorrow based on the materials I sent you attached to my Revised Confirmation of Motion of today if the presiding Justice so directs."

Donc, pour clarifier, monsieur le juge, ---

THE COURT: What's that?

Oui, m'expliquer un peu le dernier point donc?

M. RANCOURT: Donc, ---

LA COUR: C'était même pas aujourd'hui, c'est demain que vous êtes prêt à être ici, c'est ça, ou aujourd'hui?

M. RANCOURT: Non, c'est parce que ce courriel a été envoyé hier.

LA COUR: Bon, bien, donc, c'est moi -- donc, à moi que vous êtes à adresser cette question?

M. RANCOURT: Exactement.

LA COUR: Voilà. Bon.

M. RANCOURT: Donc -- donc, le point est le suivant: Mon but est de demander un ajournement pour faire cette motion dans l'ordre tel que prévu par les règles pour donner aux deux parties la chance de bien argumenter leur cas mais je suis aussi prêt, si vous me dirigez, d'argumenter la motion elle-même aujourd'hui.

LA COUR: Bien, si vous -- écoutez, nous, on est -- on contrôle notre propre procédure ici et, comme je dis, c'est une question que on a vue -- c'est pas la première fois qu'on a vu ce genre de point fait.

Donc, ce que je veux tenter de faire c'est de comprendre les points de base de ce que vous voulez dire et déterminer si moi je suis en mesure de faire ça aujourd'hui ou si ça prend quelque chose d'autre.

Mais, donc, mon idée c'est comme, sur une façon pratique et -- que vous m'expliquez plus ou moins les -- les deux/trois points que vous avez, pourquoi vous croyez que je devrais me retirer de -- de ce dossier et, à ce moment, je pourrai voir est-ce que je suis en mesure de décider ça maintenant ou est-ce que je devrais ajourner l'affaire.

Donc, à ce moment, je vous invite de faire

plus ou moins les points en grande ligne d'abord parce que, comme j'ai dit, c'est pas quelque chose de nouveau.

M. RANCOURT: Oui.

LA COUR: C'est quelque chose qu'on -- c'est des questions qu'on traite. Donc, ...

M. RANCOURT: Alors, merci beaucoup pour votre explication, monsieur le juge.

LA COUR: Oui.

M. RANCOURT: Ça m'aide beaucoup. Ça m'oriente.

Alors, voici, je vais me référer à la Notice de Confirmation de Motion qui a été révisée.

LA COUR: Oui.

M. RANCOURT: Donc, comme premier document.

LA COUR: Oui.

M. RANCOURT: Et, en fait, monsieur le juge, est-ce que vous avez une copie complète de ce document? Parce que j'en ai une copie additionnelle pour vous si vous l'avez pas.

LA COUR: Oui, oui, 15 pages? J'ai tout imprimé.

M. RANCOURT: C'est ça.

LA COUR: Voilà.

M. RANCOURT: C'est une quinzaine de pages.

LA COUR: Oui, c'est ça.

M. RANCOURT: Vous l'avez?

LA COUR: Oui, je l'ai devant moi.

Je l'ai lu. Je l'ai lu ce matin, soigneusement.

M. RANCOURT: D'accord.

Donc, je vais me référer à ce document et, premièrement, le premier document qui est dans -- qui est attaché à cette confirmation c'est une

lettre que j'avais envoyée ---

LA COUR: Au Juge Hackland?

M. RANCOURT: Au Juge Hackland.

LA COUR: Oui.

M. RANCOURT: Et dans cette lettre -- cette lettre, donc, c'est important de réaliser que le contexte de ma demande actuelle est déjà, par rapport à une situation de crainte -- de crainte raisonnable ---

LA COUR: Oui, oui.

M. RANCOURT: --- de partialité.

LA COUR: Et, moi, je devrai statuer sur cette question aujourd'hui, donc?

M. RANCOURT: Exactement.

LA COUR: Oui. Bon.

M. RANCOURT: Et donc, dans cette lettre au Juge Hackland, j'avais encerclé les paragraphes 18 à 20. Vous voyez ce -- mon encerclement?

LA COUR: Oui. Oui, oui.

M. RANCOURT: Et là, j'ai demandé au Juge Hackland qu'il -- j'ai exprimé mon inquiétude de la difficulté de trouver un juge qui n'avait pas une attache proche avec l'Université d'Ottawa, la Faculté de Droit, et cetera, et j'ai demandé, donc, étant donné les circonstances du temps que le Juge Hackland fasse des arrangements spéciaux pour un juge hors région.

Et le Juge Hackland, donc, m'a répondu -- et c'est le prochain document dans ces -- dans ces documents ---

LA COUR: Donc, juste pour comprendre le fondement de votre plaidoirie, si je comprends

bien ---

M. RANCOURT: Oui.

LA COUR: --- c'est le fait que c'est un juge bilingue de la Région Est et, en plus, qui a des rapports avec l'Université d'Ottawa; c'est ça?

M. RANCOURT: Non, ma lettre au Juge Hackland était simplement pour exprimer mon inquiétude que il y aurait probablement des difficultés pratiques à trouver un juge qui n'avait pas de lien avec l'Université d'Ottawa ou avec la firme BLG étant donné les circonstances du cas.

C'était pour exprimer cette inquiétude-là et j'ai fait la demande, donc, qu'il y ait un juge de l'extérieur.

LA COUR: Non, mais, moi, je devrais comprendre votre argumentation de base ici.

M. RANCOURT: Oui.

LA COUR: Et, donc, quelles sont les circonstances?

Parce que tout est -- tout est basé sur les circonstances.

M. RANCOURT: Oui.

LA COUR: Vous comprenez bien?

Et, donc, quelles sont les circonstances sur lesquelles vous fondez votre objection?

C'est ça que je devais comprendre.

M. RANCOURT: J'y arrive, monsieur le juge.

LA COUR: O.k. Bon. Je pense c'est peut-être c'était dans ces mots-là mais ---

M. RANCOURT: Non, non, non, c'est pas ---

LA COUR: --- bon, on est ---

M. RANCOURT: Ça c'était le contexte ---

LA COUR: Oui.

M. RANCOURT: --- parce que je demande que -- il faut être encore plus sensible quand c'est une demande de deuxième ordre par rapport à cette crainte; n'est-ce pas?

Quand déjà il y a -- il y a ce problème devant les yeux d'un observateur raisonnable et informé si déjà il y a potentiellement un problème si, en plus, on en ait un autre, il faut encore faire plus attention.

C'était mon seul but d'expliquer ça.

LA COUR: Donc, l'idée c'est -- la logique c'est que si on fait beaucoup de demandes, le Tribunal devrait tenir compte ---

M. RANCOURT: Non ---

LA COUR: --- de ça venant d'une partie seulement?

M. RANCOURT: Non, c'est -- c'est des demandes par -- si -- s'il y a des évidences concrètes pour crainte raisonnable ---

LA COUR: Bon, o.k., mais ---

M. RANCOURT: --- à ce moment-là -- et on y arrive -- excusez-moi, monsieur le juge.

LA COUR: Oui.

M. RANCOURT: Et donc, juste rapidement, avant d'arriver aux évidences dont vous parlez, le Juge Hackland a répondu la chose suivante:

« If you have any legitimate concerns about the presiding judges in partiality, you should follow the normal process of bringing a motion to have a judge recuse himself or herself. »

Et donc, mon intention c'était de suivre ---

LA COUR: Je comprends.

M. RANCOURT: --- le processus normal; vous voyez?

LA COUR: Mais, toutefois, on va -- on va regarder ça aujourd'hui comme je vous ai expliqué un peu là.

M. RANCOURT: Oui, tout à fait.

Alors, donc, maintenant, j'arrive aux -- à quelques éléments des circonstances qui vous -- qui vous concernent directement.

LA COUR: Oui.

M. RANCOURT: Et, donc, je regarde ce premier document qui est le troisième document attaché ---

LA COUR: Oui.

M. RANCOURT: --- qui est un communiqué de presse du -- du Ministère de la justice du Canada.

LA COUR: Oui.

M. RANCOURT: Et dans ce communiqué de presse, on -- on annonce que vous avez été nommé à la Cour. On annonce ça le 18 juin 2010.

LA COUR: Oui.

M. RANCOURT: Et on -- on parle de vos différentes associations et on mentionne que vous êtes -- alors, je cite:

« ... he was the Founding Director of the Centre for Legal Translation and Documentation at the University of Ottawa, 1981 à '84. »

LA COUR: Oui.

M. RANCOURT: Et on dit aussi un peu plus bas:

« For many years, Mr. Justice Annis was a Professor at the Faculty of Law of the University of Ottawa. »

LA COUR: Oui.

M. RANCOURT: Donc, deux éléments qui, donc, pourraient susciter cette crainte ---

LA COUR: Est-ce qu'il n'y a pas une troisième sur cette page?

M. RANCOURT: Il y a une troisième qui -- qui est de moins grande importance mais, pris dans le contexte de -- des deux autres, je pense que c'est significatif, surtout étant donné les circonstances du cas précis et c'est: vous aviez été un associé et un 'partner' en anglais with BLG.

LA COUR: Oui, c'est ça.

M. RANCOURT: BLG.

LA COUR: C'est ça.

M. RANCOURT: Donc, voilà.

Et donc, ensuite, ---

LA COUR: Est-ce que -- je devrais juste souligner les points peut-être sur lesquels vous avez sauté un peu.

C'est que mon affiliation avec Borden Ladner Gervais s'est terminée en 2001. J'étais Directeur du Centre et ça s'est terminé en '85. La dernière fois que j'ai fait quel que soit avec -- comme prof à l'Université d'Ottawa et tous les -- tous les avocats -- bien bien -- bien des avocats font comme ça à temps partiel -- c'était en 1988.

En plus, lorsque j'étais Directeur Fondateur

du Centre, j'étais employé du Ministère de Justice et je travaillais sur un projet conjoint de l'Université et l'Association des juristes d'expression française en Ontario.

Donc, c'est -- c'est les années en avant qui vous causent les problèmes parce que selon nos règles qu'on voit souvent que surtout après une période de 25 ans où avec l'Université et l'Association comme travaillant sur ce projet et même en tant que avocat dans son bureau, il y a 11 ans, c'est bien bien déterminé que ça n'a pas -- ça n'est pas -- ça ne soulève aucun problème d'appréhension.

Donc, ça c'est bien compris.

M. RANCOURT: Oui, je comprends ce point-là, monsieur le juge, mais il y a un autre élément qui est important et j'aimerais ---

LA COUR: Oui, allez-y.

M. RANCOURT: --- qui est l'élément le plus important, je pense.

LA COUR: Bon.

M. RANCOURT: Et donc, le prochain et dernier document que je souligne c'est un curriculum vitae de votre part, je crois; n'est-ce pas?

LA COUR: Oui, ça semble être.

M. RANCOURT: Et, donc, c'est quelque chose que j'ai trouvé sur l'Internet et je crois qu'il est authentique.

Est-ce que j'ai raison de penser ça?

LA COUR: Oui, oui, ça l'air très bien. Oui, c'est ce que j'ai ---

M. RANCOURT: O.k.

LA COUR: Ça me représente un peu.

M. RANCOURT: Et donc, dans la -- à la troisième page de ce document ---

LA COUR: Oui?

M. RANCOURT: --- il y a une entête qui est par rapport à l'enseignement.

LA COUR: Oui.

M. RANCOURT: Et dans cette entête, on dit que vous avez enseigné jusqu'en 2001.

LA COUR: Bien, j'étais -- j'étais participant. Ça veut dire que ---

M. RANCOURT: Oui.

LA COUR: Ça veut dire, une fois par an, on me demandait d'aller participer dans une cour où vous avez une présentation et critiquer les étudiants.

M. RANCOURT: D'accord.

Et donc, vous avez ---

LA COUR: Sans être payé. Ça c'est du bénévole.

M. RANCOURT: Ah bon.

Eh bien, donc, vous avez dit que la dernière fois c'était -- donc, il y a -- il y avait des activités en '93/'94. Ça c'était par rapport à ---

LA COUR: Oui, mais ça c'est le problème -- comme je dis ---

M. RANCOURT: Oui. Alors, mon ---

LA COUR: Ce qu'on fait, donc, il y a 20 ans ou même 10 ans -- et même pour les avocats qui plaident devant nous, la règle de base c'est cinq ans à moins qu'on est vraiment proches et membres ou quelque chose comme ça.

J'ai -- j'ai pas d'affiliation avec ces deux -- c'est deux personnes.

M. RANCOURT: Ce qui -- le (inaudible) de ce qui me concerne le plus, monsieur le juge, c'est la chose suivante: c'est que c'est précisément dans la même Faculté de Droit, de Common Law, à l'Université d'Ottawa que vous avez eu des contacts et que vous avez enseigné jusqu'en 2001 alors que la plaignante elle-même est dans la même faculté, dans la même section et elle a enseigné depuis -- en termes de Professeur assistant -- depuis '92.

Et donc, je regarde les années dans votre CV, il y a un chevauchement de huit ans où vous avez été des collègues dans la même Faculté, vous avez enseigné aux mêmes étudiants. C'est ça qui me préoccupe.

LA COUR: Est-ce que je -- est-ce que je pourrais vous aider?

M. RANCOURT: Oui.

LA COUR: Je connais pas du tout la Demanderesse, la partie demanderesse.

Aucune -- j'ai aucune -- je pense pas que je n'ai jamais fait sa -- sa -- qu'est-ce que le mot là -- je n'ai jamais fait sa connaissance et je la connais pas du tout; du tout, du tout, du tout, du tout -- si ça vous aide -- du tout.

M. RANCOURT: Ça m'aide beaucoup, monsieur le juge.

LA COUR: Oui.

Ça c'était à temps partiel. Comprenez bien là.

M. RANCOURT: D'accord.

LA COUR: On est un avocat très occupé, on arrive, on enseigne, on fout le camp -- on fiche le camp; excusez-moi.

M. RANCOURT: M'hm.

LA COUR: Et on part.

Et, donc, c'est pas comme on rencontre les membres de la Faculté. On rencontre les étudiants, c'est tout.

Mais c'est -- c'est du bénévole, à vrai dire, parce qu'on paye -- c'est un montant ridicule qu'on paye, selon le temps perdu en tant qu'avocat.

M. RANCOURT: Donc, monsieur le juge, étant donné vos explications et si vous n'avez rien d'autre à ajouter qui pourrait donner lieu à une telle crainte -- et je vois que vous dites « Non », alors, dans ce cas-là, je -- je retire ma -- ma demande.

LA COUR: Selon nos règles de base, c'est -- c'est quelque chose -- si j'avais un lien avec la partie demanderesse moi-même, j'aurais dû -- j'aurais à me retirer.

M. RANCOURT: Oui.

LA COUR: Ça c'est quelque chose qu'on -- on regarde toujours pour une chose: Mais est-ce que je connais cette personne?

Il y a quelques avocats avec -- avec qui je suis très proche -- donc, il y a un ou deux du bureau de Borden Ladner -- mais c'est pas Peter Doody, c'est des autres personnes avec qui je travaille très fort, très étroitement pendant mon

-- ma carrière.

Peter et moi étaiens dans la même -- même section mais j'ai jamais fait un procès avec lui. J'ai jamais fait quoi que ce soit avec lui, donc, c'est -- moi, j'ai été travailler dans un autre domaine que lui ---

M. RANCOURT: D'accord.

LA COUR: --- à ce moment-là.

M. RANCOURT: Alors, monsieur le juge, vous comprenez ce qui a donné lieu à mes craintes et surtout dans le contexte dans lequel on est.

LA COUR: Oui.

M. RANCOURT: Mais je retire -- je retire formellement cette -- cette inquiétude de ma part.

LA COUR: Bien, j'apprécie cette -- ce geste.

Donc, on peut aller de l'avant avec les trois motions en permission d'aller en appel. O.k.?

M. RANCOURT: Oui, monsieur le juge.

THE COURT: Any -- any -- did you follow that, Mr. Dearden and Mr. Doody?

MR. DEARDEN: Yes, sir.

THE COURT: O.k.

So I think we're going to proceed to the -- to the three motions.

MR. DOODY: Thank you, Your Honour.

THE COURT: So in terms of time, concernant le temps disponible, Monsieur Rancourt?

M. RANCOURT: Excusez-moi, monsieur le juge.

LA COUR: Oui, allez-y -- excusez-moi, non, non, c'est ---

M. RANCOURT: J'ai besoin d'un instant juste

pour ---

LA COUR: Oui, oui, oui, arrangez vos affaires là.

M. RANCOURT: Oui.

MR. DEARDEN: We do have one housekeeping matter on time. That clock is wrong.

THE COURT: Oh my goodness!

MR. DEARDEN: I have ten to eleven; what do you have, Your Honour?

THE COURT: Yes, I have -- I have, yes, ten to eleven.

Donc, et ça c'est ma question: Étant donné qu'on est -- on devrait diviser un peu le temps, je me demande combien de temps est-ce que vous prévoyez prendre pour votre argumentation?

C'est ça un peu ma question.

M. RANCOURT: Monsieur le juge, en tant que personne auto-représentée, j'ai -- j'ai beaucoup de mal à gérer ça.

Je vous assure que je fais les choses le plus efficacement possible ---

LA COUR: M'hm.

M. RANCOURT: --- et je me tiens uniquement aux points importants que je veux faire et que j'estime que je dois faire.

Par contre, dans le passé -- parce que on est en gestion de cause, vous savez?

LA COUR: Oui.

M. RANCOURT: Et ---

LA COUR: Moi, je suis pas le juge en ---

M. RANCOURT: Tout à fait.

LA COUR: C'est le Juge Smith.

M. RANCOURT: Oui.

LA COUR: Il peut pas entendre aujourd'hui étant donné que c'est sa -- il est impliqué dans les décisions.

M. RANCOURT: Exactement.

LA COUR: Voilà.

M. RANCOURT: Donc, juste pour vous donner un petit peu l'historique par rapport à cette question de temps, en gestion de cause, typiquement, on a des dates et on a des estimations de comment ça pourrait prendre de temps et, à chaque fois, je m'oppose et je dis c'est très serré, je pense pas que c'est possible de faire ça et la réponse, typiquement, c'est de dire: Ben, c'est notre cible, on essaie, et après on voit.

LA COUR: Oui.

M. RANCOURT: Et je pense que cette approche est plus raisonnable qu'une approche rigoureuse où on limite le temps de façon rigoureuse. Ça c'est la première chose.

LA COUR: Mais est-ce que vous allez me fournir un estimat de votre temps? C'est ça ma question un peu là.

M. RANCOURT: Je pense -- je pense que ça devrait être raisonnable de finir la première motion aujourd'hui.

LA COUR: Bon, bien, ça c'est ---

M. RANCOURT: Parce que c'est la plus grosse ---

LA COUR: Oui, voilà.

M. RANCOURT: Mais, en fait, c'est deux motions en une ---

LA COUR: Bon, laissez-moi répondre à ce point-là.

Les ressources de notre Tribunal sont très précieuses. Vous comprenez bien? On a du monde, on est très occupés comme juges et on ne permettra jamais des avocats à faire ce que vous faites: Donc, l'idée de demander plus de temps qu'on pourrait accorder à une motion en permission d'appel.

Donc, ça c'est déjà compris. Même si vous êtes auto-représenté, on peut pas jouer avec les règles de temps.

On a une journée -- on a une journée et, donc, normalement, je vous accorde la moitié de ce temps et ça c'est la règle -- ça c'est la règle de base parce que les points malgré votre difficulté de les exprimer sont quelque chose que, nous, en tant que juges, on voit souvent; o.k., tout en -- on connaît bien -- très bien les règles, on connaît très bien comment ça marche devant -- dans les procédures et ce genre de choses et nous sommes là aussi d'une certaine façon d'empêcher qu'il y ait une injustice qui se passe.

Donc, on a certainement ce contrôle. On est là d'une façon neutre pour regarder ce problème.

Et dans ces circonstances, le plus que, moi, je pourrais prévoir c'est de vous accorder la moitié du temps qui reste et ça c'est parce que, d'une certaine façon, je vois un certain chevauchement des -- des plaidoiries par les -- les deux avocats de l'autre côté.

M. RANCOURT: Alors, monsieur le juge, je m'engage à être le plus efficace possible ---

LA COUR: Oui.

M. RANCOURT: --- à m'en tenir que aux points importants ---

LA COUR: Oui.

M. RANCOURT: --- et je vous demande si vous voulez questionner la pertinence de ce que je dis, je pense que je suis prêt à répondre.

LA COUR: Oui, oui.

M. RANCOURT: Et donc, je m'engage à faire ça ---

LA COUR: C'est un dialogue entre ---

M. RANCOURT: O.k.

LA COUR: --- souvent entre un avocat et la personne qui se représente et le juge.

M. RANCOURT: Je m'engage à faire ça le mieux possible.

LA COUR: Je vois que Maître Dearden est debout.
Yes, sir?

MR. DEARDEN: Thank you, Your Honour.

Your Honour, I noted that Mr. Rancourt tried to convince you that we could only do one of the two motions that you are -- have scheduled today.

What he hasn't told you is he's tried that with Justice Smith and Justice Smith, cognisant of the fact of that Mr. Doody starts the *Elliott Lake Inquiry* in the New Year, said: "I'm setting the date for the Champerty Motion December the 13th."

THE COURT: Yes.

MR. DEARDEN: "And we'll see how the Leave Applications -- the two Leave Applications that

are before you today -- unfold but if the Judge hearing those hears those in time and if they're dismissed, okay, we can proceed on December the 13th."

THE COURT: Yes.

MR. DEARDEN: This is nothing but yet another move by Mr. Rancourt to try to throw off the Champerty Motion schedule which hovers my client's given time ---

THE COURT: I understand you're making these submissions but I -- what I -- I believe that Mr. Rancourt has accepted that he would use half the time and I'm going to help him achieve that and we'll get it done today.

So whatever it is ---

MR. DEARDEN: But, Your Honour, you're new -- you're new to this -- this Defendant.

THE COURT: Yes.

MR. DEARDEN: What he told you in code was basically: Well, we're going to get to the end of the day but if I don't finish because I always take more time than I'm allocated -- and he does -- then, oh, too bad, you know, we've got to go. Put it off and completely destroy the Champerty Motion schedule which cannot happen.

THE COURT: And ---

MR. DEARDEN: He has to stick to -- to whatever time you allocate him and, Your Honour, I've got to put this on the record because he uses the record and takes it out of context.

THE COURT: Yes.

MR. DEARDEN: Is you're not -- that's not

treating him any differently than any other counsel that appears in this court house. You get time allocations, you use the time as you please and, when your time is up, you're time is up.

THE COURT: And we're just using five minutes of that time.

MR. DEARDEN: I appreciate that but, unfortunately ---

THE COURT: I have -- I think -- I think that Mr. Rancourt understands that he has a limited time. I am going to assist him in dealing with the three motions, all right, and basically going forward -- assuming that it's about 11:00 o'clock now, I guess I'd better -- 11:00 o'clock, we have probably an hour and three quarters left in the morning and two and a half hours left in the afternoon; all right? So that's where we are.

So that would mean that, on the basis of equal time, would that be four and a quarter hours; is that correct?

So I'll give you two and a quarter hours; all right? But that's the maximum that you have available.

So you have to -- excusez-moi, je vous adresse en anglais, excusez-moi, il m'a -- il faut que je vous parle en français. Excusez-moi.

Mais comme compris, moi, je vous remets deux heures et quart de les quatre heures et quart qui nous restent -- et ça comprend les pauses et ce genre de choses -- et, à ce moment, vous serez obligé de terminer votre argumentation dedans ce

deux heures et quart. Ça c'est juste -- vous aurez un autre 15 minutes que les autres que sera pour les fins de réplique si c'est nécessaire.

Donc, vous devrez à vrai dire faire vos commentaires, vos argumentations, dedans une période de deux heures et, par après, on va les écouter et, après ça, vous aurez une quinzaine de minutes de répondre parce que répondre c'est -- normalement, c'est limité jusqu'au point qu'on n'a pas prévu qui ne prend pas par surprise et il faut répondre.

Donc, à ce moment, il me semble que vous avez trois -- trois motions et peut-être la meilleure chose c'est de faire ça dans l'ordre 1 et 3 parce qu'il me semble que ce sont -- ces choses se rejoignent un peu et celui au milieu où le problème c'est que le refus du Juge Smith de mettre la chose sur 'hold' ça c'est une autre paire de manches un peu, donc, on va -- on pourra traiter ça par après.

C'est assez -- c'est pas plus court à vrai dire. Je pense je vois ---

M. RANCOURT: Monsieur le juge, non, je -- si vous permettez, je veux faire des soumissions.

Je m'objecte un peu à cet ordre ---

LA COUR: Oui, oui. Non, c'est une recommandation seulement.

M. RANCOURT: Oui, oui.

Je m'objecte à cette façon de faire parce que la première motion ---

LA COUR: Oui?

M. RANCOURT: --- et toute à peu près -- à propos

de la crainte raisonnable de partialité.

LA COUR: Oui.

M. RANCOURT: Que ça soit Monsieur -- le Juge Smith qui refuse de l'entendre cette cause ou que ça soit ---

LA COUR: O.k., bon ---

M. RANCOURT: --- une demande d'appel mais tout est relié.

C'est la même -- les mêmes arguments de droit, et cetera, et je pense que cette motion-là devrait aller en premier et devraient être traitées ensemble.

LA COUR: De toute manière, vous avez 40 pour chacun, donc, va de l'avant.

M. RANCOURT: Donc, monsieur le juge, juste deux points avant de commencer.

Je m'objecte formellement au -- à ce que Monsieur Dearden essaie de caractériser mon caractère personnel en disant des choses qu'il a dit à propos des limites de temps.

Je voulais signaler ça à la Cour.

LA COUR: Mais je pense ce que vous avez vu que moi j'ai -- moi, j'ai pas pris -- j'ai pas pris ça en considération dans ces circonstances pour le moment; o.k.?

Moi, je -- moi, je me -- me limite au -- à ce qui est dit devant nous aujourd'hui et le fait qu'on a quand même trois -- trois motions et ce genre de choses.

Mais allez de l'avant donc.

M. RANCOURT: Et je veux réserver mon droit à la -- aujourd'hui, si j'estime que je n'ai pas pu

faire un argument clé qui est important, je vais m'objecter à la limite de temps.

Je -- j'espère rencontrer vos attentes mais je vais réserver mon droit pour ça.

LA COUR: Oui.

M. RANCOURT: Merci.

LA COUR: C'est -- ça c'est votre -- votre décision. Vous pouvez le faire comme vous voulez.

M. RANCOURT: Merci.

LA COUR: Voilà.

Mais je vous -- je dis simplement que vous devrez se tenir aux règles de base qui -- on a dans ce Tribunal et voilà. C'est amplement de temps pour arguer des motions.

M. RANCOURT: Merci, monsieur le juge.

LA COUR: Surtout parce que vous avez déjà déposé des -- j'ai une brique -- des renseignements.

Je pense que si vous avez quelque chose à ajouter à ce qui est déjà là-dedans, bon bien, vous devrez commencer là mais si tout est déjà là-dedans, c'est déjà par écrit, il me semble.

M. RANCOURT: D'accord.

Laissez-moi deux secondes pour m'orienter, monsieur le juge, juste pour sortir les bons documents.

(COURTE PAUSE/SHORT PAUSE)

MR. DEARDEN: So, Your Honour, just so I'm clear, he will now be starting the reasonable apprehension of bias motion?

THE COURT: He's going to tell us, I assume, but I've said 40 minutes each if that's what we're

doing.

So ---

M. RANCOURT: Donc, il y a ---

MR. DEARDEN: Or it should -- you can tell him,
Your Honour, he can -- Mr. Rancourt ---

THE COURT: He can do it any way he wants.

MR. DEARDEN: He can use some of the documents.

THE COURT: Yes, yes, yes, yes.

MR. DEARDEN: Because I don't think it's going to
take him 40 minutes to deal with the July 31st
letter as I'm calling it.

LA COUR: Mais, oui, c'est votre deux heures,
comme vous voulez mais je suggère que peut-être
vous avez trois et ils ont pas la même importance
mais on vous a assigné le même temps à chacun.

Allez-y tout de même.

M. RANCOURT: Mais il y a quand même des
questions procédurales importantes avant de
commencer parce que Monsieur Doody a demandé
d'exclure des documents que, moi, j'ai demandé
qu'y soient devant la Cour.

LA COUR: Oui.

M. RANCOURT: Et donc, je veux commencer avec ce
point procédural qui est quand même central avant
de commencer avec autres choses.

LA COUR: Oui.

M. RANCOURT: Alors, il y a ma Confirmation de
Motion originale et j'aimerais l'expliquer si
c'est possible.

LA COUR: Oui.

Juste laissez-moi aussi avoir le -- le
factum ...

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: J'ai une copie ici si vous avez ---

LA COUR: Non, non, non, c'est ici quelque part.

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: Donc, là, c'est juste par rapport aux documents, monsieur le juge. C'est pas mon argument dans la motion.

LA COUR: O.k.

M. RANCOURT: Mais c'est important.

LA COUR: Oui.

M. RANCOURT: Alors, il y avait une Confirmation de Motion qui a été envoyée le 13 novembre, monsieur le juge. Je veux parler de ça.

LA COUR: Oui.

M. RANCOURT: J'ai une copie ici si vous voulez, monsieur le juge.

LA COUR: Vous avez? Peut-être ça serait plus vite parce que je le vois pas ---

M. RANCOURT: Oui, alors, voici une copie ---

LA COUR: --- directement devant moi là.

M. RANCOURT: Et je donne une copie à mes amis aussi. Voici.

LA COUR: Merci.

M. RANCOURT: Alors, ---

LA COUR: Ah! Attends une minute là, je l'ai ici là. Oui, celui-là.

M. RANCOURT: Vous l'avez trouvé ---

LA COUR: Oui.

M. RANCOURT: --- monsieur le juge?

LA COUR: Oui, oui, c'est devant moi.

M. RANCOURT: O.k.

Alors, si on regarde cela, j'avais indiqué

les matériaux qui devaient être devant la Cour.

LA COUR: Oui.

M. RANCOURT: Et j'avais parlé de trois motions.

Il y avait la motion -- si on veut, la motion double qui implique et le Juge Beaudoin et le Juge Smith -- qui était la première motion ---

LA COUR: Ah, o.k.

M. RANCOURT: --- avec laquelle on va commencer aujourd'hui.

LA COUR: Oui.

M. RANCOURT: J'avais indiqué que il y avait une motion d'arrêt, 'Statement in a Leave to Appeal', mais c'était surtout -- donc, cette motion-là sera peut-être 'moot' dépendant des résultats de la première motion.

LA COUR: M'hm.

M. RANCOURT: Et donc, on peut attendre pour voir si on doit la traiter ou pas.

LA COUR: Oui.

M. RANCOURT: Mais cette motion-là est devant vous et, surtout, j'ai besoin des matériaux dans cette motion-là c'est pour ça que j'ai indiqué que ça faisait partie des matériaux qui devaient être devant la Cour parce que le livre des autorités pour cette motion-là c'est toutes mes autorités centrales que je vais utiliser.

Donc, j'avais -- j'avais prévu que les motions seraient entendues en même temps et j'ai mis un seul livre d'autorités avec toutes les autorités par rapport à crainte raisonnable de partialité ---

LA COUR: Mais ---

M. RANCOURT: -- dans le même livre.

LA COUR: Mais il me semble qu'on devrait regarder ça d'une certaine façon pratique.

M. RANCOURT: Oui.

LA COUR: Et, donc, si vous avez gain de cause sur vos motions ou dans la permission d'aller en appel, à ce moment, on va re-communiquer pour déterminer le sursis ou quelque chose comme ça qui devrait s'appliquer.

M. RANCOURT: Oui.

LA COUR: O.k., donc, devrait déterminer quand même les questions de fond d'abord.

M. RANCOURT: Oui.

Mais ma -- une autre préoccupation ---

LA COUR: Oui?

M. RANCOURT: --- c'est que j'aimerais, pendant que j'argumente ma première motion, pouvoir utiliser les documents de cette autre motion parce que j'avais prévu un seul livre des autorités.

LA COUR: O.k., donc ---

M. RANCOURT: Et je pense que mes ---

LA COUR: C'est -- sont quelles -- peut-être -- où est-ce qu'on trouve votre ---

M. RANCOURT: Alors ---

LA COUR: --- votre allégation sur ça et, en même temps, Mr. Doody, I think you addressed this issue as well?

MR. DOODY: I did in my ---

THE COURT: Just so I have yours in front of me at the same time.

MR. DOODY: I filed the document which I called

the ---

THE COURT: I have your factum ---

MR. DOODY: --- "Confirmation ..." -- but I filed a Confirmation of Motion ---

THE COURT: 'Confirmation', that's what yours was as well.

MR. DOODY: --- in response to Mr. Rancourt's.

THE COURT: Yes.

MR. DOODY: I'm hoping you have a copy, Your Honour.

THE COURT: I do have that in front of me, yes, I do.

MR. DOODY: Okay.

And I addressed this at the bottom of the first page and the -- the second page.

THE COURT: This is the Stay Pending Leave and maybe your translation didn't catch that but I just indicated to him that what we would do is we would wait for a determination on the principle -- on the principle decisions and then, if he succeeds, then I will do something to allow him to argue that.

But we'll make that as an original decision and, if necessary, I'll -- I'll indicate that nothing should happen until we come back and decide the Leave -- the Stay matter.

So the Stay matter, we're not going to deal with today; all right?

MR. DOODY: Thank you, Your Honour.

And the second -- and the second issue ---

THE COURT: And he's asking for documents now to be -- to be put in ---

MR. DOODY: The second issue about the documents

THE COURT: Yes?

MR. DOODY: --- and I frankly didn't understand
where -- what he was talking about in his
Confirmation of Motion Form when he said that:

"... the presiding Judge will be referred to
the following materials: 'Stay Pending Leave
to Appeal', 'Scope of Evidence in Motion to
Stay the Action' ..."

LA COUR: Yes.

MR. DOODY: The Motion to Stay the Action is the
Champerty Motion. That's the underlying motion
that these motions are all interlocking.

THE COURT: Yes, yes.

MR. DOODY: And ---

THE COURT: And that's been put off till we
decide what's going to happen today.

M. RANCOURT: Non, mais ---

MR. DOODY: That's -- and, in fact, that issue of
the scope of the evidence in the Motion to Stay
is -- has been ordered by Justice Beaudoin to be
heard on the -- at the same time as the Champerty
Motion.

M. RANCOURT: Non, non ---

MR. DOODY: That was my thought.

M. RANCOURT: Il y a une confusion. Monsieur
Doody est confus.

LA COUR: Oui.

M. RANCOURT: Alors, voici ---

MR. DOODY: Ce n'est pas une confusion.

M. RANCOURT: Oui, oui, c'est une confusion.

Alors, voici, ce que j'appelle "Stay Pending Leave to Appeal - Scope of Evidence in Motion to Stay the Action", c'est le titre précis de la motion que j'ai mis sur la page avant et arrière de la motion qui est la 'Motion for Stay'. O.k., me semble être précis.

LA COUR: Oui, mais on est d'accord qu'on va remettre ---

M. RANCOURT: Oui.

LA COUR: Voilà. Donc, ---

M. RANCOURT: Mais ce n'est pas la Motion Champartie comme Monsieur Doody dit ---

LA COUR: Non, mais aussi, on va remettre la motion pour sursis en attendant la décision.

M. RANCOURT: Je suis d'accord.

LA COUR: Voilà. O.k.

M. RANCOURT: Mais je voulais simplement expliquer que Monsieur Doody pense qu'il y a une signification spéciale dans le 'Scope of Evidence and Motion to Stay', c'est simplement le titre qui a été donné à la motion.

LA COUR: Ce qui reste, donc ---

M. RANCOURT: Oui?

LA COUR: Ce qui reste, donc, qu'est-ce que vous voulez? Vous voulez -- il y a des documents?

M. RANCOURT: Oui ---

LA COUR: --- que vous voulez faire ---

M. RANCOURT: Et donc, mon point -- mon point est uniquement que, dans cette motion qui sera -- qui sera peut-être décidée plus tard, ---

LA COUR: Oui?

M. RANCOURT: --- il y a un livre des autorités

que je veux utiliser.

LA COUR: Bon, vous pouvez utiliser des autorités n'importe quand là.

M. RANCOURT: Juste ---

LA COUR: Il y a pas de problème avec les autorités.

M. RANCOURT: Merci.

LA COUR: C'est ça.

M. RANCOURT: Alors, je voulais m'assurer de ça.

LA COUR: Bon, c'est ça. Ça marche comme ça.

M. RANCOURT: D'accord.

Et aussi, Monsieur Doody a prétendu que cette motion n'avait pas été servie et j'ai ici l'affidavit de service de cette motion.

LA COUR: Ça c'est quelle, cette motion-là?

M. RANCOURT: Cette motion d'arrêt que j'ai appelée 'Stay Pending Leave to Appeal' ---

LA COUR: O.k., mais de toute manière je pense que on va sauter sur ça parce que, de toute manière, il a tout cela maintenant en main et c'est compris.

M. RANCOURT: D'accord.

LA COUR: Je pense qu'il y a pas de problème avec la signification, Mr. Doody, at this point?

Mr. Doody, there's no problem with ---

MR. DOODY: I was -- I did not come today prepared to argue the Stay.

THE COURT: And we're not going to so ---

MR. DOODY: So I'm fine.

THE COURT: So service is fine.

MR. DOODY: Fine.

LA COUR: O.k., voilà, c'est ça.

M. RANCOURT: O.k., mais il a été servi le 4 septembre ---

LA COUR: Oui, oui, ça c'est -- voilà.

M. RANCOURT: Bon.

Et, finalement, j'ai demandé que soit devant la Cour la motion dans laquelle cette motion s'inscrit pour que les documents soient là devant la Cour. J'ai demandé que:

« ... the Defendant's Motion Record and Factum Book of Authorities for the Refusals Motion ... »

elle-même dans 'Maintenance and Champerty'. J'ai demandé que ces documents-là soient devant la Cour et je l'ai demandé dans la Notice de Motion pour la motion qui est devant nous aujourd'hui.

Donc, c'est très clair j'avais l'intention de ---

LA COUR: J'ai cette documentation devant moi.

M. RANCOURT: Vous l'avez?

LA COUR: Oui.

M. RANCOURT: Et ---

LA COUR: Votre 'Motion Record' dans la première chose? Dans la motion de 'Refusal'? Ça?

M. RANCOURT: Oui.

LA COUR: Oui, j'ai tout ça. J'ai -- je suis allé chercher tout ça.

M. RANCOURT: Merci.

Je voulais juste m'assurer de ça parce qu'il y a eu des oppositions.

LA COUR: De toute manière, c'est ---

M. RANCOURT: O.k. C'est réglé.

LA COUR: S'il y a quelque chose là-dedans qui

est pertinent, bon bien ...

Mais j'ai ça avec moi.

M. RANCOURT: Merci.

LA COUR: Pas de quoi.

M. RANCOURT: O.k., alors, on continue.

Et maintenant, donc ---

LA COUR: Mais vous n'avez pas ça, si je comprends ça, avec vous là?

You don't have that with you?

MR. DOODY: I don't have that. It was not my ---

THE COURT: Okay. All right.

MR. DOODY: Mr. Rancourt filed ---

THE COURT: Well, if there's any -- if there's any problem ---

MR. DOODY: --- the paper but he didn't file that.

THE COURT: If there's any problem, I'll ---

MR. DOODY: Thank you, Your Honour.

THE COURT: I'll give you a chance.

M. RANCOURT: Alors, j'aimerais commencer avec la motion elle-même, le 'Motion Record', en anglais ---

LA COUR: Oui. Très bien.

M. RANCOURT: --- de la première motion que nous allions entendre aujourd'hui et j'aimerais tourner à l'onglet 1 qui est la Notice de Motion.

LA COUR: Oui.

M. RANCOURT: Et j'aimerais aller à la page 20, en gros caractères, en haut de la page.

LA COUR: Ça c'est 20 de 39?

M. RANCOURT: Non, 20 de ---

LA COUR: Excusez-moi.

M. RANCOURT: --- tout le paquet. Le gros '20' qui est en haut de la page.

LA COUR: Nous, on cherche votre -- le dossier de motion, s'il vous plaît.

(COURTE PAUSE/SHORT PAUSE)

LA COUR: Voilà.

M. RANCOURT: Donc, le Tome 1 ---

LA COUR: Oui.

M. RANCOURT: --- si vous allez à la page 20 de ce ---

LA COUR: C'est l'onglet -- onglet 1; c'est ça? Oui, hein?

M. RANCOURT: Oui, c'est l'onglet 1 et c'est la page 20, en gros caractères, en haut de la page.

LA COUR: Parce que j'ai vos -- ça c'est votre 'Notice of Motion for Leave'?

M. RANCOURT: O.k., vous pouvez aller à la page 16 du 'Notice of Motion'.

LA COUR: Voilà, o.k.

M. RANCOURT: Si vous préférez ne pas regarder les chiffres en haut de la page.

LA COUR: O.k., excusez-moi. Ah, je vois. Excusez-moi.

M. RANCOURT: D'accord.

LA COUR: Voilà.

M. RANCOURT: Bon, ça c'est dans le 'Notice of Motion'.

LA COUR: Voilà.

M. RANCOURT: Et c'est la dernière page:

« The following documentary evidence ... »

O.k., ça fait partie:

« The following documentary evidence ... »

LA COUR: Oui.

M. RANCOURT: Et le paragraphe 7 dit bien:

« The Defendant's Motion Record and Factum in
the Defendant's Refusal Motion in the
Maintenance and Champerty Motion ... »

comme des documents que je vais utiliser.

Alors, je comprends mal que Monsieur Doody ne
les ait pas amenés avec lui aujourd'hui.

LA COUR: Bon, bien, de toute manière, on va
faire notre possible.

M. RANCOURT: Bon.

LA COUR: Tant pis pour lui.

M. RANCOURT: Oui. Merci.

Donc, maintenant, je vais commencer avec un
survol de la première motion.

LA COUR: Oui.

M. RANCOURT: Un survol rapide ---

LA COUR: Oui.

M. RANCOURT: --- de la première motion ---

LA COUR: Oui.

M. RANCOURT: --- pour mettre ---

LA COUR: Rappelons que j'ai déjà lu tout cela
mais ---

M. RANCOURT: Oui.

LA COUR: --- allez-y.

M. RANCOURT: Oui, et je tiens à -- à le dire
d'une façon que j'espère va être la plus
cohérente possible.

Alors, ce cas présent de crainte raisonnable
de partialité n'est pas un cas où il s'agit
uniquement de certains commentaires
questionnables d'un juge.

5 Ce n'est pas un cas comme ça mais bien un cas où il y a des évidences non contestées et pertinentes d'un contrat financier entre un juge et un parti dans la Cour; c'est-à-dire cette bourse où le Juge Beaudoin était signataire des 'Terms of Reference'.

10 Et des évidences non-contestées de liens affectifs reliés à une installation physique; c'est-à-dire une salle de meeting dans un des plus prestigieux cabinets d'avocats au Canada.

LA COUR: Oui?

15 **M. RANCOURT:** Le 'Common Law' a établi un critère qui s'appelle en anglais 'Automatic Disqualification' dans un tel cas.

20 Et je vais en parler quand je vais parler des autorités. Au UK, c'est un concept qui est bien connu et ça veut dire qu'on n'a pas besoin d'argumenter la crainte raisonnable de partialité, c'est automatique.

25 Et cette question-là n'a pas été déterminée à la Cour Suprême au Canada encore, un cas comme celui-là, à savoir si cette jurisprudence s'applique au Canada. Je vais donc signaler ça dans les autorités.

30 Alors, il y a deux questions -- en anglais, on dit 'issues' -- dans cette motion. Premièrement, les faits sont-ils suffisants pour indiquer une crainte raisonnable de 'personnalité' sur le Juge Beaudoin, assez pour admettre une demande d'aller en appel?

Première question.

LA COUR: M'hm.

5
M. RANCOURT: Deuxième question: La décision du Juge Smith de ne pas permettre une détermination juridique de crainte raisonnable de 'personnalité' dans cette même Cour, dans la même Cour -- je demandais que la détermination soit faite dans cette Cour supérieure -- admet-elle une demande d'aller en appel?

LA COUR: Oui, mais ---

M. RANCOURT: Oui?

10
LA COUR: --- il vous a dit que les juges n'ont pas le droit de statuer sur ce qu'un autre juge fait ici. C'est juste en appel.

M. RANCOURT: Il a dit ça ---

LA COUR: Oui.

15
M. RANCOURT: --- et, donc, on va -- on va examiner ça et on va demander si il -- il pouvait faire ça.

20
Il s'agit donc, dans les deux cas -- parce que il faut -- il faut comprendre, monsieur le juge, que normalement quand on soulève une telle question de crainte, il y a deux possibilités: soit on soulève pendant le procès ou pendant la motion, à ce moment-là, le juge qui est là, qui préside, doit l'entendre immédiatement et décider s'il va se récuser ou pas.

25
La deuxième possibilité c'est qu'on l'apprend après et on le soulève après la procédure et, là, on va en appel avec -- en utilisant ça comme fondement.

30
Dans ce cas-ci, je l'ai soulevé pendant la motion mais le Juge Beaudoin a refusé de s'attarder à la question et de répondre s'il y a

-- il y avait ou pas. Et je pense que les évidences sont claires sur cette question-là.

LA COUR: Oui.

M. RANCOURT: Et, donc, j'ai dit: Bien, normalement, c'est la même Cour qui doit décider pendant la motion.

Alors, pendant qu'on était encore dans la même motion, j'ai demandé qu'il y ait une détermination judiciaire. Le Juge Smith m'a répondu: « Je ne touche pas à ça. »

C'est là que je pense qu'il y a eu une erreur.

LA COUR: Je pense qu'il a statué sur ça, non, en disant que: « Je suis pas en appréhension de partialité. »

Je pense qu'il a dit qu'il était pas là; non?

M. RANCOURT: Non.

LA COUR: De toute manière.

M. RANCOURT: Non, et ces faits-là -- ça c'est ce que mes amis aiment bien répéter mais nous allons regarder le ---

LA COUR: Oui, oui.

M. RANCOURT: --- le procès-verbal précis ---

LA COUR: Oui, oui.

M. RANCOURT: --- parce qu'il faut regarder les faits. Il n'a pas statué sur cette question-là. Absolument pas.

Donc, ---

LA COUR: Moi, je pensais qu'il disait qu'il était pas en situation d'appréhension de partialité en ce qui concerne sa décision du 20 juin mais il se reconnaissait d'avoir des

problèmes à aller en avant.

C'est ça que, moi, j'ai compris son -- ses mots. Et peut-être -- vous pouvez peut-être ---

M. RANCOURT: Mais j'ai -- j'ai expliqué très clairement dans mes soumissions, monsieur le juge, que c'est pas du tout le cas.

LA COUR: Oui.

M. RANCOURT: Il y avait même pas cette motion-là devant le Juge à l'époque.

J'avais fait une demande d'ajourner pour amener cette motion-là. Sa décision c'était de refuser mon ajournement et, quand il est revenu, il s'est récusé pour des raisons autres que ça. Il a dit: C'est à cause de votre comportement, Monsieur Rancourt. C'est des raisons autres.

Il n'a jamais jugé ou déterminé la question de ---

LA COUR: Donc, on va regarder -- on va regarder la preuve pour ça, la transcription là.

M. RANCOURT: Oui, on va regarder ça.

Donc, je viens de dire qu'il y avait deux questions et je les ai expliquées. Donc, dans les deux cas, c'est mon droit d'obtenir une détermination judiciaire pour crainte raisonnable de 'personnalité' qui -- que je mets de l'avant.

Alors, j'insiste pour souligner qu'une partialité actuelle ou réelle n'est absolument pas une question qui est devant la Cour.

Il est -- et je -- ça n'a jamais été mis devant la Cour. J'ai toujours utilisé l'expression « crainte raisonnable de partialité ». On ne pourra trouver nullement une

place dans les procès-verbaux où j'avance autres choses que ça.

LA COUR: Autre que quoi?

M. RANCOURT: Pardon?

LA COUR: Autre que quoi?

M. RANCOURT: Autre que un problème de crainte raisonnable de partialité.

LA COUR: Oui.

M. RANCOURT: Donc, il ne s'agit pas de partialité réelle.

Malgré les allégations de mes amis, les faits sont clairs, il s'agit uniquement de crainte raisonnable de partialité. L'intégrité personnelle du Juge Beaudoin n'est pas en doute. Tout est pertinent seulement vis-à-vis une détermination judiciaire de cette crainte raisonnable de partialité.

Maîtres Doody et Dearden aussi vont argumenter -- ont argumenté que le Juge Beaudoin a déjà fait une telle détermination juridique.

LA COUR: Ce que j'ai -- ça veut dire, donc, il faut regarder un peu le -- la transcription pour décider ---

M. RANCOURT: Oui, il faut le regarder ---

LA COUR: Oui.

M. RANCOURT: --- attentivement ---

LA COUR: Voilà.

M. RANCOURT: --- parce que ceci est contraire aux faits.

Une telle motion n'était pas devant la Cour ---

LA COUR: On va regarder.

M. RANCOURT: D'accord. Et -- d'accord.

Donc, je continue mon survol.

LA COUR: Oui.

M. RANCOURT: Il s'agit ici d'une situation où un article de blog qui est critique de l'Université d'Ottawa a donné lieu à une poursuite pour un million de dollars et les frais de cette poursuite privée sont payés par l'Université d'Ottawa; entièrement.

Et, il y a dans le 'Statement of Claim' un énoncé comme quoi il y a une intention de partager les résultats de cette poursuite-là avec l'Université d'Ottawa. On va donner de l'argent à l'Université d'Ottawa: la moitié des 'punitive damages'.

C'est ce qui a donné lieu à ma motion de champartie pour éliminer l'action pour abus de processus: de l'argent public qui est utilisé dans une cause privée pour poursuivre un ancien professeur à l'Université d'Ottawa.

Et donc, c'est cette motion de maintenance et de champartie.

La Plaignante est professeure à l'Université d'Ottawa dans la Faculté de Common Law. Vous le savez. Sa cause ---

LA COUR: Je savais pas -- j'ai pas attrapé ça -- entre nous, j'ai pas vu ça dans tout ça mais de toute manière ...

M. RANCOURT: O.k.

Bien, c'est -- c'est le contexte de -- de la ---

LA COUR: Oui, oui.

M. RANCOURT: --- de la chose.

LA COUR: Oui.

M. RANCOURT: C'est une cause privée payée par son employeur -- par l'employeur lui-même -- contre un ancien professeur -- moi-même -- qui a été à l'Université d'Ottawa, plein professeur ---

LA COUR: Est-ce que vous étiez à la Faculté de Droit aussi?

M. RANCOURT: Non, j'étais à la Faculté de Sciences.

LA COUR: De Sciences, o.k.

M. RANCOURT: Oui, en Physique, pendant 23 ans.

L'Université d'Ottawa est un parti à part entière dans la motion de champartie. Ça c'est un élément de contexte essentiel qui est dans toutes les motions associées donc.

L'Université d'Ottawa est représentée par BLG, comme vous le savez. Le 'Co-chair' de BLG a émis les 'raisons' de Monsieur Rock, le Recteur de l'Université d'Ottawa, que Monsieur Rock avait pour financer le procès privé de 'libel' de la Plaignante.

En autres mots, Monsieur Rock a choisi d'utiliser le 'Co-chair' de BLG pour dire pourquoi, lui, y faisait ce qu'il faisait.

Le Juge Beaudoin, donc, était en charge. Il a -- le Juge Beaudoin -- les circonstances sont les suivantes: Il a créé une bourse au nom de son fils à l'Université d'Ottawa dans la même Faculté de Droit où est la Plaignante et il est signataire de ce contrat, 'the Terms of Reference'.

Nous allons regarder le contrat dans quelques instants.

La bourse est dans la Faculté de Common Law. Bon. BLG, en plus, a nommé une salle de meeting en l'honneur du fils décédé du Juge Beaudoin.

Et le Juge Beaudoin a exprimé publiquement qu'il tient à cet honneur de la salle qui est nommée en l'honneur de son fils et qu'il est fier et réconforté par cet honneur.

Quand j'ai découvert un article médiatique décrivant ces circonstances, c'est-à-dire, la bourse qu'on pouvait appeler la 'Bourse Beaudoin', disons, pour que ça soit court et la salle BLG nommée en l'honneur du fils de Monsieur Beaudoin, quand j'ai découvert ça, j'ai aussitôt demandé un ajournement pour amener une motion pour que le Juge Beaudoin se récuse pour crainte raisonnable de partialité.

Alors, il est important de noter que le Juge Beaudoin n'a pas -- n'a jamais divulgué ces liens. Il n'a jamais divulgué ces circonstances devant les parties dans cette -- dans la motion champartie ou dans les conférences pour la cause.

Et l'avocat ou BLG aussi n'a pas divulgué l'existence de cette salle qui était nommée en l'honneur du fils du Juge Beaudoin. Donc, il y a eu aucune divulgation.

Ensuite, donc, j'ai -- j'ai avancé -- donc, j'ai amené cette demande d'ajourner pour amener la motion en question que j'ai ---

LA COUR: J'ai lu toutes les transcriptions.

M. RANCOURT: Oui.

LA COUR: Donc, pas besoin de ---

M. RANCOURT: C'était donc le 24 juillet ---

LA COUR: Oui, pas besoin -- j'ai lu toute --
toute la transcription, donc, on peut peut-être
regarder les aspects de la transcription
lorsqu'on va regarder ---

M. RANCOURT: Oui.

LA COUR: --- concernant qu'est-ce que on a
dit ---

M. RANCOURT: D'accord.

LA COUR: S'il y a une décision ou non, on va
voir mais pas besoin -- j'ai compris car il était
en français, voilà, et donc ---

M. RANCOURT: M'hm.

LA COUR: --- il s'est retiré. Bon.

M. RANCOURT: M'hm.

O.k., donc, je -- je vais écouter mon survol

LA COUR: Oui.

M. RANCOURT: --- étant donné vos -- votre
direction.

LA COUR: Rappelez que j'ai -- que j'ai lu tout
tout tout -- j'ai lu votre factum et une
bonne partie de votre dossier de motion.

Donc, j'ai saisi les choses essentielles.

M. RANCOURT: D'accord.

Alors, un dernier point dans ce survol c'est
que si -- je cherche, donc, cette détermination
judiciaire ---

LA COUR: Oui.

M. RANCOURT: --- et soit par le biais de cette
demande d'aller en appel, soit par la motion que

j'ai déposée devant le Juge Smith.

LA COUR: Oui.

M. RANCOURT: Et il est important de réaliser que si jamais on trouve une crainte raisonnable ---

LA COUR: Oui.

M. RANCOURT: --- la jurisprudence est très claire, ça veut dire que toutes les décisions ne peuvent pas tenir.

LA COUR: Oui.

M. RANCOURT: C'est très clair.

LA COUR: Oui.

M. RANCOURT: O.k.

Donc, c'est pour ça que je n'ai -- c'est pas nécessaire pour moi d'argumenter les erreurs de droit dans les décisions elles-mêmes, j'ai choisi uniquement de me concentrer là-dessus parce que c'est pas nécessaire.

Je peux avoir des opinions comme quoi il y a eu des erreurs de droit mais je ne les présente pas devant la Cour en ce moment.

Alors, on peut -- comme vous dites -- aller aux faits et, pour aller aux faits, il faut aller à la transcription; et, pour aller à la transcription, nous allons aller au texte de la -- du procès-verbal pour le 24 juillet.

LA COUR: Oui.

M. RANCOURT: Et ce texte se trouve dans les matériaux de Monsieur Doody.

LA COUR: Oui.

M. RANCOURT: Alors, Monsieur Doody a soumis un 'Motion Record' et, à l'onglet -- à l'onglet 18 du 'Motion Record' de Monsieur Doody ---

LA COUR: Oui.

M. RANCOURT: --- j'avais prévu le faire mais puisque Monsieur Doody l'avait déjà fait, je l'ai pas fait.

À l'onglet 18, donc, nous avons le procès-verbal du 24 juillet.

LA COUR: Oui.

M. RANCOURT: Et si vous permettez, monsieur le juge, je vais m'asseoir pour -- avec mes lunettes pour mieux lire le texte en question.

LA COUR: Oui, oui, si ça -- ça vous va, on vous ---

M. RANCOURT: Merci.

Alors, il est pas très long ce procès-verbal et je pense que il faut le regarder attentivement.

Alors, premièrement, on parle de choses très très préliminaires.

LA COUR: Oui.

M. RANCOURT: Par rapport aux traductions, et cetera.

Les traducteurs sont émis et, ensuite, je dis à la page 2, à la ligne 21:

« Monsieur le juge, je dois soulever un point important immédiatement avant de commencer la séance pour les refus, et cetera. Et je m'excuse, j'ai laissé mes lunettes ... »

Bon, ce jour-là, j'avais pas mes lunettes.

« C'est la première occasion ... »

je dis à la page 3:

« ... devant le Tribunal de soulever cette question difficile depuis que cette position

s'est cristallisée pour moi. Je demande que la motion présente soit ajournée pour me permettre d'étudier le procès-verbal de notre dernière séance ... »

que je n'avais pas en main, la séance du 20 juin, je ne l'avais pas en main à ce moment-là:

« ... notre dernière séance et de déposer une motion pour demander que vous vous récusiez pour crainte raisonnable de partialité et apparence d'un conflit d'intérêt. »

Alors, c'est très clair, c'était ça ma demande. C'était la seule demande qu'il y avait devant le Juge.

Et je continue:

« C'est la première occasion devant le Tribunal. J'avais des craintes et des impressions depuis notre première conférence sur la cause le 8 février mais, pour moi, il y a maintenant un patron qui s'est établi et je viens de comprendre qu'il me paraît concret et réel maintenant. »

Et là, je commence à décrire dans les pages qui suivent des éléments de ce qui s'est passé le 20 juin et dans les différentes séances.

Et j'avais amené avec moi des compte-rendus de -- ou des pages de compte-rendus de ces séances-là.

LA COUR: M'hm.

M. RANCOURT: Et je -- je me mets à décrire donc les raisons qui m'ont amené à ceci en donnant des exemples.

Monsieur Dearden s'objecte que je n'ai pas

donné notice. Je m'objecte qu'il s'objecte, et cetera.

Ensuite ---

LA COUR: On est où donc?

M. RANCOURT: On est à la page 6.

LA COUR: Oui.

M. RANCOURT: Sept (7) ensuite.

LA COUR: Oui.

M. RANCOURT: Je continue à présenter à la page 8

LA COUR: Oui.

M. RANCOURT: Je continue à présenter les différentes choses dans les 'transcripts'.

Et le Juge Beaudoin ---

LA COUR: Oui.

M. RANCOURT: --- à plusieurs reprises -- là, je -- excusez-moi, c'est difficile à suivre avec l'anglais qui est la traduction en italique là.

LA COUR: M'hm.

M. RANCOURT: J'avais pas ça dans ma version.

Ah, o.k., je vais être obligé de sortir mes notes par rapport à -- non, ça, ça va pas marcher.

Il y a plusieurs moments où le Juge me demande, à plusieurs reprises:

« Est-ce qu'il y a autre chose que qu'est-ce qui s'est passé devant moi dans la discussion? Est-ce qu'il y a autre chose, Monsieur Rancourt? »

LA COUR: O.k.

M. RANCOURT: Et, donc, là, je dis:

« Oui, il y a ... »

Éventuellement, je dis:

« Oui, il y a cet article que je viens de trouver. »

LA COUR: Donc, ça c'est -- ça, ça commence où donc?

M. RANCOURT: Et là, j'essaie de trouver la page mais avec une transcription, les pages correspondent plus à mes notes.

LA COUR: Oui.

M. RANCOURT: Je m'excuse de ça.

LA COUR: Non, mais -- est-ce que les avocats peuvent m'aider à trouver où commence à parler à ce sujet?

Mr. Doody and Mr. ---

MR. DOODY: I'm looking for it myself.

THE COURT: You are too? Yeah.

MR. DOODY: Yeah.

Is it page 21, where Justice Beaudoin says at Line 19:

"Monsieur Rancourt, j'insiste, ..."?

M. RANCOURT: Oui, alors, ça c'est ---

MR. DOODY:

« ... vous devez préciser ... »

M. RANCOURT: Merci.

Alors, ça c'est à la page 21, Monsieur Doody nous aide beaucoup ici. Je -- c'est là que le Tribunal dit:

« Monsieur Rancourt, j'insiste, vous devez préciser les motifs sur lesquels vous dites que je devais me retirer ... »

LA COUR: Oui, mais, vous, où est-ce que vous précisez ces ---

M. RANCOURT: Oui, oui, oui, donc, là -- là, c'est où il insiste, donc, c'est le début.

LA COUR: Oui.

M. RANCOURT: Alors, je dis:

« Oui, j'ai bien compris, monsieur le juge
... »

Il demande de préciser les motifs ---

LA COUR: Oui.

M. RANCOURT: Et, donc, ça -- ça doit pas être très loin là.

LA COUR: J'espère.

M. RANCOURT:

« ... présenter clairement ... »

Oui, autres choses, sûrement. On va à la page 22.

LA COUR: Voilà, je pense peut-être à 27, je vois:

« Alors, j'ai ici trouvé un article auquel je viens juste de découvrir ... »

Est-ce que c'est ça où ça commence? Par hasard?

M. RANCOURT: Oui.

LA COUR: O.k. Voilà.

M. RANCOURT: Je crois que oui.

LA COUR: Voilà.

M. RANCOURT: Merci.

Alors, donc, je -- tout le début, c'était ---

LA COUR: Oui, oui.

M. RANCOURT: --- le va-et-vient ---

LA COUR: Le début c'est -- bon, on arrive, donc, allez-y.

M. RANCOURT: Oui.

Et donc, là, maintenant, j'arrive à la vraie

chose et je dis:

« Alors, j'ai ici trouvé un article ... »

Et -- et il faut se rappeler, je suis en train de présenter les raisons pour -- que je vais de l'avant pour cet ajournement que je demande.

Je suis en train de dire à la Cour je ne suis pas prêt à argumenter la motion tout de suite parce que je n'ai même pas les procès-verbaux, je n'ai pas tout ce qu'il faut. J'ai besoin du temps de le faire correctement. J'ai appris ça il y a quelques jours.

LA COUR: Oui.

M. RANCOURT: J'avais même pas étudié les -- les autorités encore pour la plupart, donc, j'avais une idée assez vague.

LA COUR: Oui.

M. RANCOURT: Et donc, j'ai dit:

« Alors, j'ai ici trouvé un article auquel je viens juste de découvrir ... »

LA COUR: Bien, j'ai déjà lu tout ceci. Peut-être on devrait aller où on a ---

M. RANCOURT: Oui, oui. Oui, oui, mais ---

LA COUR: O.k.

M. RANCOURT: C'est important de regarder le -- parce que vous ---

LA COUR: J'ai déjà lu le chose.

M. RANCOURT: Oui.

LA COUR: C'est pas comme -- c'est pas comme est dans -- et je vais regarder ça encore une fois lorsqu'on a terminé, donc, c'est pas comme on va pas regarder ce passage de près.

Donc, allez-y au point où on va voir où il

prend une décision, bla bla bla.

M. RANCOURT: Oui, mais, monsieur le juge, vous -- vous avez signalé au début que vous aviez l'impression ---

LA COUR: Oui, oui, c'est ça je cherche.

M. RANCOURT: Alors, je veux -- je veux dire que j'ai -- c'est important de remarquer que j'ai cité des phrases de l'article du Citizen.

LA COUR: Oui, oui.

M. RANCOURT: J'ai mis l'article devant eux.

LA COUR: Oui.

M. RANCOURT: Par exemple, j'ai cité la phrase:
« Beaudoin is still picking his way through the rocky landscape of grief ... »

LA COUR: Oui, oui, et je vois tout ça.

M. RANCOURT: Oui.

LA COUR: Donc, à la page ---

M. RANCOURT: Les raisons que j'ai citées ces phrases clés c'était parce que ça donnait les -- les points d'argument essentiels pour crainte raisonnable de partialité parce que si il y a un attachement émotif à la chambre en question qui est à BLG et c'est important parce que ça veut dire que si cette chambre n'existait plus, il y aurait une importance émotif relatif à ça.

Donc, c'était pour ça que je disais ces choses-là et -- mais je les lisais dans l'ordre qu'elles apparaissaient ces phrases-là dans le texte de l'article.

LA COUR: Oui.

M. RANCOURT: O.k.?

Et -- et, donc, j'ai lu toutes les phrases

jusqu'au point où, monsieur le juge, où je dis qu'il y avait cette pièce, en haut de la page 29, et là j'ai même pas -- j'ai même pas fait d'argument. La dernière phrase de l'article que j'ai lu:

« So every day someone says you can meet in the Ian Beaudoin room ... »

Très important. C'est évident, je pense, ces mots-là rendent ça évident l'importance que ça a pour le Juge Beaudoin. En tout cas, ça donne cette apparence-là par rapport à l'argument de crainte raisonnable.

Et là, Monsieur Dearden intervient et il -- il se lève debout et il dit à voix très haute ---
LA COUR: Oui, oui, oui.

M. RANCOURT:

« What you just did ... »

LA COUR: Oui, oui, oui, oui.

M. RANCOURT: Bon.

LA COUR: Allez-y, donc. J'ai tout lu la ---

M. RANCOURT: D'accord.

LA COUR: Vous avez ---

M. RANCOURT: Alors, il faut -- le point -- le point ---

LA COUR: C'était le temps de votre temps parce que c'est pas comme moi je vais laisser ça aller. Vous avez le temps à faire ce -- cette argumentation donc je veux pas que -- qu'on -- comme limiter ça mais -- donc, allez ...

Maître Dearden, je vois ce qu'il dit. Cette situation -- il s'échauffe un peu, bon, on va de l'avant mais ---

M. RANCOURT: Oui.

LA COUR: Oui.

M. RANCOURT: Mais, monsieur le juge, je choisis de passer un peu plus de temps sur le 'transcript' parce que c'est la chose centrale.

LA COUR: O.k.

M. RANCOURT: O.k.?

LA COUR: O.k.

M. RANCOURT: Alors ---

MR. DOODY: Mais je vois que Monsieur Dearden s'échauffe.

M. RANCOURT: Il s'échauffe.

LA COUR: Oui.

M. RANCOURT: Oui.

LA COUR: Oui.

M. RANCOURT: Il s'échauffe parce que -- et il intervient juste après que j'ai lu les phrases de l'article.

LA COUR: Oui.

M. RANCOURT: Je n'ai même pas fait les arguments et je n'ai jamais pu faire les arguments pourquoi ces phrases-là étaient pertinentes.

LA COUR: Oui.

M. RANCOURT: À quoi -- comment je voulais les -- les utiliser.

LA COUR:

« What you did ... »

« What you just did, Mr. Rancourt, ... »?

M. RANCOURT: Oui.

LA COUR: C'est ça. Voilà.

M. RANCOURT: À partir de cette intervention, je n'ai jamais eu la chance d'expliquer en quoi les

phrases que j'avais lues de l'article ---

LA COUR: Oui.

M. RANCOURT: --- des journaux étaient importantes et pertinentes. C'est ça le point important.

Je n'ai jamais -- à partir du moment où j'avais lu ces phrases qui sont les données et les évidences, je n'ai pas pu faire mon argument en quoi elles étaient importantes ces phrases-là. C'est le point central, monsieur le juge.

LA COUR: Ça c'est -- ça c'est le point central.

M. RANCOURT: Oui.

LA COUR: Parce que, moi, je pensais que le point central était l'apparence d'une partialité.

De toute manière, o.k.

M. RANCOURT: Non, ce que je veux dire c'est que c'est le -- c'est le point central -- c'est un des points centraux.

LA COUR: Un des points centraux, voilà.

M. RANCOURT: Oui. Oui.

LA COUR: Des points centraux. Voilà, excusez-moi.

M. RANCOURT: Oui, parce que -- oui, c'est un des points centraux parce que ---

LA COUR: Oui.

M. RANCOURT: --- c'est toute cette idée que je n'ai jamais présenté une motion. Donc, il pouvait pas y avoir une décision.

Je demandais un ajournement simplement et j'ai -- je n'ai même pas pu faire des arguments pourquoi l'évidence concrète, c'est-à-dire l'article dans les journaux, en quoi ça se

rattachait à ce que -- à la question de crainte raisonnable de partialité. Vous voyez?

Donc, à partir de cette interruption de Monsieur Dearden, c'est là que immédiatement enchaîne le Juge Beaudoin où il dit à la page 30:

« Je trouve vos remarques tellement choquantes et provoquantes qui voulaient utiliser l'angoisse que j'éprouve au décès de mon fils et d'un projet qu'on a lancé dans la communauté à sa mémoire ou prétendre que cet esprit d'angoisse me bouleverse tellement que je suis incapable de trancher les questions en jeu. Je trouve ça ... »

Et là, je dis:

« Je n'ai prétendu ça, monsieur le juge. J'aimerais corriger, je n'ai pas prétendu ça. »

Alors, ce qui est important ici c'est de voir que je n'ai jamais avancé ce que le Juge Beaudoin dit. Je n'ai jamais avancé qu'il n'était incapable de juger parce qu'il était perturbé par le décès de son fils. Jamais. J'ai simplement lu des articles dans les journaux et j'ai voulu expliquer en quoi elles étaient pertinentes et j'ai jamais eu la chance.

Et donc, là, on enchaîne avec toute une séquence où le Juge dit:

« Refusée. Votre demande d'ajournement est refusée. »

Il parle de ma demande d'ajournement. C'était ça qui était devant le Juge et il dit à plusieurs reprises:

« Nous procédons. Nous procédons ... »
à la page 32, en haut:

« Go ahead with ... »

il dit:

“Je répète, Monsieur Rancourt, je répète
votre motion pour un ajournement est
refusée. »

C’était ça la décision du Juge.

« Refusée. Continue. »

LA COUR: À quelle page?

M. RANCOURT: Je suis en bas de la page 32, à la
ligne 27, environ, 28:

« Monsieur Rancourt, je répète, votre motion
pour un ajournement est refusée. Refusée.
Continue ... »

il dit.

« Et donc, est-ce qu’on ... »

j’essaie de parler, il dit:

« Est refusée. »

J’ai dit:

« Oui, est-ce que on ... »

parce que, là, j’essaie de voir si je pourrais
expliquer en quoi -- pourquoi j’ai lu ces
phrases-là de l’article mais je n’ai pas la
chance de le faire.

Il dit simplement:

« Motion d’ajourner refusée. »

Je suis en haut de la page 33, à la ligne 7. Je
dis:

« J’avais ... »

Il dit:

« Refusée! »

vous voyez à la ligne 11 de la page 33. Et là, je veux vous -- je veux signaler, monsieur le juge, il est très rare dans les procès-verbaux d'avoir des points d'exclamation, à -- à mon expérience, et je peux dire que ---

LA COUR: Ce n'est pas que vous avez beaucoup d'expérience là-dedans.

M. RANCOURT: Non, j'ai pas beaucoup d'expérience du tout.

LA COUR: De toute manière, allez-y.

M. RANCOURT: J'ai une dizaine de procès-verbaux.

LA COUR: Je pense qu'on va s'arrêter très bientôt, donc, pour la pause mais, donc, est-ce qu'il y a des autres points qu'on ---

M. RANCOURT: Si on pouvait juste compléter le 'transcript', ça serait ---

LA COUR: Oui? O.k.

M. RANCOURT: --- très utile.

LA COUR: Oui.

M. RANCOURT: Donc, il dit:

« Refusée. »

et, à mon sens, tout cet échange, j'essayais simplement d'expliquer pourquoi j'avais cité ces articles-là et à je sais pas combien de reprises on dit:

« Refusée. Refusée ».

LA COUR: Oui.

M. RANCOURT: C'était presque ce que -- ce qu'on appelle en anglais 'a loss of decorum'. C'est -- c'était -- c'était très, um, fort, disons.

LA COUR: Oui.

M. RANCOURT: Et j'ai donné des évidences à cet

effet-là dans mon affidavit, monsieur le juge.

J'ai expliqué ces circonstances-là en affirmant dans un affidavit pour cette motion-là les circonstances ici.

LA COUR: Oui.

M. RANCOURT: Ça c'est dans l'évidence.

LA COUR: De toute manière, j'ai lu « Refusée! », donc, voilà, c'est ça je retiens de tout cela.

M. RANCOURT: Oui.

LA COUR: Et on parle de décision qu'il a pris le 20 juin; c'est ça?

M. RANCOURT: Pardon?

LA COUR: On parle des décisions qu'il a pris le 20 juin.

M. RANCOURT: Je ne comprends pas.

LA COUR: Parce que c'est une décision qui -- refusant le -- vos -- de toute manière, continuez là.

M. RANCOURT: Non, non, mais c'est important, monsieur le juge, je comprends mal ce que vous dites parce que ---

LA COUR: Bien, c'est parce qu'il a déjà décidé le 20 juin ---

M. RANCOURT: Non.

LA COUR: --- les questions que -- sur les témoins de -- de -- de l'Université, oui, c'est ça.

M. RANCOURT: Mais ça c'est une question séparée, monsieur le juge.

Ce que je dis c'est que le 24 juillet ---

LA COUR: Oui.

M. RANCOURT: On est en train de lire le procès-

verbal du 24 juillet ---

LA COUR: Oui, oui.

M. RANCOURT: --- je mettais une motion pour
ajourner ce jour-là.

LA COUR: Oui.

M. RANCOURT: Et c'est cette motion-là qui est
refusée. On est d'accord?

LA COUR: Oui, oui.

M. RANCOURT: O.k.

Et donc, après qu'il dit « Refusée »,
monsieur le juge, -- et là on va finir avec le
'transcript' ---

LA COUR: Oui.

M. RANCOURT: --- il dit -- c'est-à-dire le Juge
Beaudoin dit:

« Je prends une pause et quand je reviens
dans 15 minutes, si vous osez continuer cette
attaque personnelle contre moi en évoquant la
mémoire de mon fils, je vais vous reconnaître
en outrage au Tribunal. Nous procédons dans
un retard de 15 minutes avec la motion pour
les refus et, ensuite, c'est terminé. »

LA COUR: Voilà.

M. RANCOURT: Alors, ça c'est important parce que
tout ce que j'ai fait c'est lire des phrases d'un
article et essayer d'expliquer sans succès
pourquoi ces phrases étaient pertinentes à ma
demande d'ajournement.

Et on -- on m'a -- on me menace avec outrage
au Tribunal ce qui est contraire à la
jurisprudence qui dit que, quand une crainte
raisonnable de partialité est amenée, la personne

qui l'amène doit être libre de l'amener.

Et ça, il y a une jurisprudence très forte sur cette question-là. Donc, je pense que c'est un point très important qui, en soi, est de l'évidence pour une crainte raisonnable de partialité.

C'est-à-dire que, non seulement il y a les évidences concrètes du contrat de la bourse et de la salle qui a été nommée par BLG, mais il y a aussi l'évidence de ce qui s'est passé le 24 juillet et il y a eu une menace d'outrage au Tribunal qui m'empêchait d'amener mes arguments.

Après la pause -- et là, c'est très important, c'est très court -- il faut voir exactement ce qui s'est passé. C'est juste quelques pages.

LA COUR: Oui.

M. RANCOURT: Parce que le Juge a maintenant réfléchi à ça, on doit -- on doit conclure -- et il revient en disant la chose suivante; il dit:

« Monsieur Rancourt, je tiens à souligner qu'il n'y a à mon avis aucun conflit entre moi et l'Université d'Ottawa à cause d'une bourse qu'on a créée à la mémoire de mon fils. »

J'ai -- personne avait demandé qu'il dise ça mais il dit:

« ... je tiens à souligner ... à mon avis ... »

Donc, il donne un avis.

« Il n'y a pas de possibilité d'annuler cette bourse. »

Le Juge Beaudoin dit:

« C'est un contrat qui était conclu entre moi, le Gouvernement de l'Ontario qui a également contribué aux Fonds des Sans Égal l'établissement de cette bourse. »

Alors, là, quand nous allons regarder le contrat, 'Terms of Reference', il y a aucune mention du Gouvernement de l'Ontario comme étant signataire. Le Gouvernement de l'Ontario donne de l'argent qui est de l'argent -- en anglais on dit 'matching' -- à l'Université mais ça c'est une procédure autre.

LA COUR: Oui.

M. RANCOURT: O.k.?

LA COUR: Mais c'est pas pertinent à ce qu'on fait ici de toute manière.

M. RANCOURT: Non, d'accord.

Pas -- il dit:

« Pas de ... »

il continue:

« Pas de possibilité d'annuler cette bourse.

Il n'y a pas de conflit d'intérêt ... »

il dit.

« Par contre -- il dit -- je trouve que votre geste ce matin de me remettre une copie de cet article qui existe depuis trois mois ... »

parce que c'est un article médiatique que je n'avais pas vu ---

LA COUR: Oui.

M. RANCOURT:

« ... et vous faites ça souvent, hein, vous arrivez à la dernière minute ... »

et cetera.

Et, ensuite, il dit:

« Pourtant, c'est dans le grand public depuis
trois mois ... »

Bon. Là, j'ai un affidavit qui explique en
détail comment j'ai découvert ---

LA COUR: Oui.

M. RANCOURT: --- cet article.

LA COUR: Oui, oui. Oui, oui.

M. RANCOURT:

« ... et vous tenez non seulement à lire le
paragraphe qui fait référence à la bourse,
vous tenez à souligner l'angoisse que
j'éprouve toujours auprès de ... »

LA COUR: Bon ---

M. RANCOURT:

« Jamais, jamais dans ma carrière ... »

LA COUR: J'ai tout lu ça. J'ai tout lu, donc,

M. RANCOURT: D'accord. Mais ---

LA COUR: Ça serait quoi que vous voulez
souligner?

M. RANCOURT: O.k., le point que je veux
souligner ---

LA COUR: Oui?

M. RANCOURT: --- c'est qu'il continue à dire ça,
parler de son angoisse ---

LA COUR: Oui.

M. RANCOURT: Il dit -- alors, voici, au milieu
de la page 36 ---

LA COUR: Oui.

M. RANCOURT: --- il dit:

« Vous avez réussi -- vous avez réussi,

5 Monsieur Rancourt, je ne peux plus continuer à
présider dans votre présence. Je serais
incapable. Vous avez réussi. Vous m'avez
provoqué tellement avec ce geste le plus pénible
qu'on aurait pu m'imposer que je suis incapable
d'être juste envers ... il faudra trouver un autre
juge ... »
et cetera.

Et je dis -- ensuite, je dis:

« Monsieur le juge, je dois signaler ... »

« Order, all rise. »

C'est fini.

LA COUR: Voilà.

M. RANCOURT: Bon, alors ---

LA COUR: C'est le moment aussi, je fais la même
chose.

M. RANCOURT: Non, mais ---

LA COUR: C'est la pause du matin qu'on va
prendre ---

M. RANCOURT: Je voulais commenter ce qu'on vient
de -- mais on peut le faire au retour.

LA COUR: Bien, je pense qu'on va -- on va
prendre la pause et on sera de retour dans 15
minutes.

M. RANCOURT: Merci.

LA COUR: Merci.

MR. DEARDEN: Your Honour, just a quick plan
check, as I'm understanding it, so we have ---

THE COURT: He's done his 40 minutes on -- but
he's obviously moving into his time on the other
ones as well.

MR. DEARDEN: Yeah. Okay.

THE COURT: All right?

THE COURT CLERK: All rise.

--- L'audience est suspendue à 11h44

--- L'audience est reprise à 11h58

THE COURT CLERK: Order, please. Veuillez vous lever. Please rise.

LE GREFFIER: La Cour supérieure de justice est maintenant recommencée. The Superior Court of Justice is now reconvened. You may be seated.

LA COUR: On va de l'avant?

M. RANCOURT: Oui.

LA COUR: Oui.

M. RANCOURT: Alors, monsieur le juge, ce procès-verbal du 24 juillet est tellement important ---

LA COUR: Oui.

M. RANCOURT: --- que je veux revenir sur les derniers mots ---

LA COUR: Oui.

M. RANCOURT: --- pour les commenter.

LA COUR: Absolument.

M. RANCOURT: O.k.?

Alors, on voit -- on voit que les dernières trois pages et demie à peine sont au retour du Juge Beaudoin après une -- un 'break'.

LA COUR: Oui.

M. RANCOURT: Et donc, on -- moi, je comprends que le Juge Beaudoin par ce moment-là quand il retourne dans la salle il a déjà décidé ce qu'il va faire.

Et donc, il commence par exprimer son avis qu'il y a aucun conflit. C'est la page 34.

LA COUR: Oui. Oui. Oui, j'ai constaté ça.

M. RANCOURT: Il n'utilise pas le mot 'crainte raisonnable', il parle carrément de conflit alors que je n'ai jamais ---

LA COUR: C'est le même concept. Moi, j'y tiens pas au mot.

M. RANCOURT: D'accord.

LA COUR: Il dit clairement c'est, voilà, je suis dans la situation ---

M. RANCOURT: Mais il avance -- donc, il donne son avis mais à la fin -- ensuite, il explique pourquoi d'après lui mais très brièvement sans que j'ai la chance de répondre ou d'avoir présenté des choses à cet effet-là ou rien.

LA COUR: Oui.

M. RANCOURT: Et ensuite, il dit:

« Vous m'avez provoqué tellement avec ce geste le plus pénible ... »

là, je suis à la page 36.

LA COUR: Oui.

M. RANCOURT:

« ... on aurait pu m'imposer que je suis incapable d'être juste envers vous ... »
essentiellement.

LA COUR: Oui.

M. RANCOURT: Et là, je -- je soumets que, quand il dit ça, il est en train de dire pourquoi il se récuse.

LA COUR: Oui.

M. RANCOURT: O.k.

Donc, il ne se récuse pas parce qu'il n'y a pas de conflit, il se récuse à cause de ça. Il se -- il n'a pas fait de détermination. Les

évidences n'ont pas été présentées. Je n'ai pas pu faire mon argument au-delà de dire les quelques phrases dans l'article médiatique. Il n'y a pas eu de décision, c'était pas une motion qui était devant lui, la seule motion était pour un ajournement.

Il n'y a pas eu de décision ---

LA COUR: Excusez-moi, moi -- moi, j'ai compris que on -- on revenait ce jour-là pour finaliser -- pour terminer cette partie de la motion du 20 juin qu'on n'a pas fait.

Est-ce que ça c'est -- est-ce que, moi, j'ai tort sur ces plans-là?

M. RANCOURT: Vous avez parfaitement raison, monsieur le juge.

LA COUR: O.k., voilà.

M. RANCOURT: Le -- le but original c'était de continuer la motion.

LA COUR: Finir la motion, voilà.

M. RANCOURT: Continuer la motion, finir la motion.

LA COUR: Oui.

M. RANCOURT: Et -- et lors de cette continuation-là, j'ai immédiatement demandé cet ajournement pour les raisons que j'ai expliquées.

LA COUR: Oui. Oui, oui. Oui.

M. RANCOURT: Mais le point important c'est que, dans le procès-verbal qu'on vient de lire, je pense qu'il est clair et non-ambigu que la seule détermination juridique et la seule chose qui était devant le Juge c'était cette demande d'ajournement.

LA COUR: C'est pas clair ça, du tout.

Du moins, il a déjà rejeté l'ajournement et il dit que: « Je suis pas capable de continuer. »

Moi, j'ai compris ça comme il est pas près à continuer avec le reste des -- des -- de la motion qui n'était pas terminée le 20 juin.

Ça c'est ce que moi j'ai lu là.

M. RANCOURT: Oui, il est pas près et il se récuse de toute affaire juridique en relation avec moi.

LA COUR: À l'avenir.

M. RANCOURT: Oui.

LA COUR: Voilà.

M. RANCOURT: Tout à fait.

LA COUR: Oui, c'est ça.

M. RANCOURT: Et mon point central sur lequel j'insiste ---

MR. DEARDEN: Excuse me, Mr. Rancourt ---

M. RANCOURT: --- c'est qu'il n'y a pas eu ---

MR. DEARDEN: --- one second.

Just a point of information, Your Honour, also that day, on July 24th, it wasn't just the refusals of Joanne St. Lewis cross-examination but there were two other motions previously scheduled to be heard that day in the examination for discoveries.

THE COURT: Oh, I didn't know that.

MR. DEARDEN: So refusals in the examination ---

THE COURT: Okay, so there was that plus the other -- plus the other ones.

MR. DEARDEN: Plus two others that were supposed to happen that day.

THE COURT: All right.

De toute manière, moi, j'ai compris ça comme:
Pas capable de continuer avec les autres choses.

M. RANCOURT: Oui.

LA COUR: O.k.?

M. RANCOURT: Pour ce qui vous concerne.

LA COUR: Oui, à l'avenir.

M. RANCOURT: D'accord.

LA COUR: C'est pas comme -- ça aucun impact, il
a déjà dit: J'étais pas en conflit d'intérêt
dans le passé. Il dit: Maintenant, vous m'avez
provoqué, je ne peux pas.

Ça, c'est moi je lis ce passage; o.k.?

M. RANCOURT: Oui, c'est ce qu'il dit mais mon
point légal ---

LA COUR: Oui?

M. RANCOURT: --- c'est que on ne peut pas
interpréter ce qu'il a dit comme une décision
juridique qu'il n'y a pas de crainte raisonnable
de partialité parce que les évidences n'ont pas
été présentées. Il y avait pas une motion devant
lui.

Et donc, on ne peut pas interpréter les
propos du Juge au retour du 'break' ---

LA COUR: Oui?

M. RANCOURT: --- comme étant une décision sur
cette question-là.

LA COUR: Oui.

M. RANCOURT: D'accord. C'était mon point
central sur ce point-là.

Bon, et ayant fait ça, qui était quand même
les -- un point d'évidence crucial, ---

LA COUR: M'hm.

M. RANCOURT: --- j'aimerais maintenant passer à un survol des autorités pertinentes à ---

LA COUR: Mais pourquoi pas aller de l'avant avec la prochaine motion devant le Juge Smith?

Pourquoi pas faire les -- moi, je peux lire les -- moi, je peux lire les autorités très bien si vous signalez les passages. Moi, je suis très bien ça.

Mais on aimerait au moins revoir tous les faits. J'aimerais voir la prochaine étape devant le Juge Smith parce qu'ils sont liés.

M. RANCOURT: Oui, c'est vrai.

LA COUR: Oui. Pourquoi pas continuer avec cette partie?

Et vous pourrez revenir sur les -- sur les autorités mais, moi, j'aimerais que vous au moins touchez à ce point-là et on va faire les autorités toutes ensemble à la fin.

M. RANCOURT: Mon idée, monsieur le juge, c'est que il y avait quelques éléments clés dans les autorités qui permettent de voir les faits dans ce contexte-là.

C'était ça mon idée ---

LA COUR: Je suis capable de faire ça. Croyez-moi là.

M. RANCOURT: O.k.

LA COUR: Ça fait 40 ans ou 41 ans, donc, je suis capable de lier les trois ensemble.

M. RANCOURT: Alors, ça ---

LA COUR: Finissons avec -- finissons avec les faits.

M. RANCOURT: D'accord.

LA COUR: O.k.? Il me semble.

M. RANCOURT: Donc, donnez-moi quelques instants

LA COUR: Oui, oui.

M. RANCOURT: --- pour me recueillir parce que
c'est pas ---

LA COUR: Si ça -- peut-être vous dire que ---

M. RANCOURT: C'est pas ce que j'avais prévu mais

LA COUR: Oui.

M. RANCOURT: --- si vous me donnez quelques
instants.

Donc, par rapport aux autorités, sans faire
ce que j'avais prévu, je vais simplement dire une
chose importante.

LA COUR: Oui?

M. RANCOURT: C'est que il y a une autorité de la
Cour d'Appel de l'Ontario qui indique clairement
que le concept de crainte raisonnable de
partialité est tout aussi important dans une
motion que dans un procès.

LA COUR: Ah oui. C'est fondamental.

M. RANCOURT: C'est les mêmes critères, et
cetera.

D'accord. Merci.

LA COUR: Avez-vous la motion que vous avez
présentée au Juge Smith? Est-ce que ça c'est
devant moi?

M. RANCOURT: Elle doit être dans le 'Motion
Record', j'imagine que oui.

Je vais regarder le tableau tout de suite à

l'instant. Alors, si je vais au Tome 1 de mon 'Motion Record', puisque vous me posez la question ---

LA COUR: Oui.

Et les autres avocats peuvent m'aider également.

MR. DOODY: Your Honour, I believe Mr. Rancourt did not put it in the materials he filed in the Court but it is found at Tab 12 of my ---

THE COURT: Is it?

MR. DOODY: --- Motion Record.

THE COURT: All right.

M. RANCOURT: O.k., heureusement que Monsieur Doody est là.

LA COUR: Oui.

M. RANCOURT: Pardon?

LA COUR: Non, je suis toujours là. Donc, 12, o.k.

M. RANCOURT: Oui.

LA COUR: Voilà. O.k.

M. RANCOURT: O.k., donc, ça c'était la motion.

On peut commencer par regarder cette motion, monsieur le juge.

LA COUR: Oui.

M. RANCOURT: Alors:

« The motion is for ... »

le premier point:

"... a judicial determination that there was reasonable apprehension of bias regarding Justice Beaudoin in this action."

Puis, ensuite, c'est:

"In the alternative ..."

Donc, le point central de la motion c'est

cette détermination parce que s'il y a détermination positive toutes les décisions ne peuvent pas tenir.

Par exemple, au point 4:

« ... an order that all rulings set aside cannot stand ... »

Ça ce sont simplement des conséquences d'une trouvaille s'il y avait crainte raisonnable de partialité.

Alors, mon -- mon point central dans cette motion est ça. J'aimerais ...

Je vous laisse lire, monsieur le juge.

LA COUR: Oui, oui.

(COURTE PAUSE/SHORT PAUSE)

LA COUR: O.k. Voilà, je pense que j'ai saisi un peu le ---

M. RANCOURT: La nature de cette motion?

LA COUR: Oui.

Et vous avez répété tout qu'est-ce qu'il se passait le 24, si je comprends bien; oui.

M. RANCOURT: M'hm.

LA COUR: Oui.

(COURTE PAUSE/SHORT PAUSE)

LA COUR: O.k. Voilà.

M. RANCOURT: Alors, le point légal que j'aimerais souligner par rapport à cette Notice ---

LA COUR: Oui?

M. RANCOURT: --- est le suivant: Quand on amène une telle crainte en mi-motion pendant le processus d'une motion, c'est la même Cour -- en fait, le même Juge -- qui doit l'entendre.

5 Dans ce cas, le Juge Beaudoin ne l'a pas entendue. Donc, j'ai fait une motion devant la même Cour pour l'entendre et j'ai fait cette motion pendant que la motion qui a été interrompue était en cours.

Je cherchais à avoir une détermination sur cette question de crainte raisonnable de partialité pendant que la motion était en cours, pour l'interrompre.

10 **LA COUR:** M'hm.

M. RANCOURT: Et je l'ai demandé à la même Cour.

Et j'ai aussi signalé au Juge Smith, le 27 juillet ---

15 **LA COUR:** Oui.

M. RANCOURT: --- que il y avait des interactions importantes entre ce qu'y avait été fait le 20 juin et ce qui allait être fait à l'avenir.

20 Et, entre autres, il y avait une question d'un expert-témoin qui avait fourni un affidavit qui avait été déterminé par le Juge Beaudoin et qui avait un impact sur ce qu'on allait faire à venir.

25 Et bien que le Juge Smith a dit: « Je ne peux pas défaire les arguments de -- les jugements d'un autre juge », il a quand même repris cette décision-là *de novo* pour pouvoir continuer.

30 **LA COUR:** Ça va -- il a fini les -- les argumentations sur le -- les autres points, ouin, et le refus des autres témoins.

M. RANCOURT: Il a repris une décision ferme du Juge Beaudoin ---

LA COUR: Oui.

M. RANCOURT: --- et il l'a re-déterminée *de novo*.

LA COUR: C'est laquelle, donc, exactement?

M. RANCOURT: C'était la décision ---

LA COUR: De cet expert à l'avenir?

M. RANCOURT: Pour ne pas admettre l'affidavit de l'expert et le nom de l'expert était: Louis Béliveau.

Donc, d'une part, il dit: Je ne peux pas toucher à un ordre de ce juge. Je n'ai pas la jurisprudence. D'autre part, il prend -- et pour continuer, il a besoin d'une -- d'une décision du Juge alors il la re-détermine *de novo*.

LA COUR: Est-ce qu'il a dit: Donc, j'aimerais vous entendre sur ce point-là et je vais déterminer ça encore une fois?

M. RANCOURT: Il a -- il a proposé de lui-même ---

LA COUR: Montrez -- montrez-moi, s'il vous plaît, la -- la preuve sur ce point-là.

M. RANCOURT: O.k., c'était dans le 'transcript' de ce qui s'est passé le 27 devant la Cour.

Et, donc, j'ai pas un -- un onglet exactement à cette place-là là mais ---

LA COUR: Est-ce que ça se trouve à quelque part dans les ---

M. RANCOURT: C'est -- c'est pas contesté, monsieur le juge, c'est aussi dans les raisons qu'il a émis.

Donc, c'est pas contesté que cette question-là ---

LA COUR: O.k., montre-moi dans -- dans la raison, peut-être ça c'est plus facile, donc.

M. RANCOURT: Dans les raisons du Juge Smith. Donc, je sais pas si y sont devant nous en ce moment parce qu'y sont venues plus tard. C'est dans l'autre motion.

Peut-être que ça serait mieux d'aller au 'transcript' mais il est un peu long.

THE COURT: Let's just stop there.

Mr. Doody?

MR. DOODY: I'm sorry, I don't -- I must have missed something, I don't know what ---

THE COURT: Well, he's indicating that Justice Smith said, even though there's a previous decision with respect the admissibility of evidence of Mr. Béliveau -- I guess he's an expert -- that what happened was that Mr. Smith reheard it and re-made the decision.

MR. DEARDEN: Your Honour, I think Mr. Rancourt might be confusing this motion which is the Apprehension of Bias Motion with the second motion which is the September 6th decision of Justice Smith where he did reject the expert evidence -- so-called expert evidence put in by Mr. Rancourt from a lawyer called "Louis Béliveau".

Louis Béliveau has nothing to do with the Apprehension of Bias ---

THE COURT: Okay, but he's suggesting, as I understand, that that decision had already been made by Justice Beaudoin.

MR. DEARDEN: Justice Beaudoin made a decision

about Louis Béliveau's admissibility and ruled that it didn't meet the *Mohan* criteria ---

THE COURT: Yes.

MR. DEARDEN: --- on June the 20th during the U of O witnesses ---

THE COURT: And he's trying to use that, as I understand, as a point to say: Well, he then picked up and actually redid a decision already made by -- by Justice Beaudoin to show that it's the same decision, that it's all connected, that there's no distinction.

MR. DEARDEN: No, in -- in Joanne St. Lewis' cross-examination, Mr. Rancourt again brought up the Louis Béliveau expert reports, so-called ---

THE COURT: Yes.

MR. DEARDEN: --- and I specifically -- and I'll get to it when we get to the September 6th decision ---

THE COURT: Yes.

MR. DEARDEN: --- the next Leave Application -- put on record and Justice Smith agreed that he isn't going to look at anything that Justice Beaudoin did because that was separate from the motion that was before him.

Nothing was argued in the refusals of ---

THE COURT: All right.

MR. DEARDEN: --- Joanne St. Lewis before Justice Beaudoin.

THE COURT: Okay.

MR. DEARDEN: So they were silos.

M. RANCOURT: Donc, évidemment ---

MR. DOODY: Yeah, and just -- just so -- just so

you're clear ---

THE COURT: Just I'm trying to -- quel est le litige?

M. RANCOURT: C'est pas ce qu'il présente là ---

LA COUR: Non, non, mais il faut que je comprends le litige, o.k., parce que je comprends -- je comprends mal la situation, donc, il faut que, moi, j'ai des -- des discussions. Oui.

What else, Mr. Doody?

MR. DOODY: Just so it's clear from my perspective, Your Honour, what Justice Smith did on September the 6th had nothing to do with -- with my client's interests and nothing to do with Justice Beaudoin's decision on June the 20th and nothing to do with Justice Smith's decision on the 31st of July.

THE COURT: Silos.

MR. DOODY: Three silos.

THE COURT: Silos. Okay. Voilà.

M. RANCOURT: O.k., donc, ça c'est leur position ---

LA COUR: Oui, on va regarder ça un peu.

M. RANCOURT: Oui, mais si c'était si distinct alors pourquoi est-ce que le Juge Smith a dit: Donc, je vais prendre cette décision-là du Juge Beaudoin et je -- je vais la faire *de novo*?

MR. DOODY: He didn't say that.

M. RANCOURT: Oui, il a dit ça dans le 'transcript'.

LA COUR: Bon, bien, montrez -- montrez-moi ce qu'il a dit là.

M. RANCOURT: Alors, si je pouvais chercher

électroniquement, on pourrait trouver ---

LA COUR: Peut-être c'est quelque chose que vous pourrez faire pendant l'heure du lunch; o.k.?

M. RANCOURT: Oh! J'ai pas accès à un ordinateur ici.

LA COUR: Ah!

M. RANCOURT: Il faudrait que ---

LA COUR: Je pensais que c'était dans vos affaires ici. Je dis que vous allez regarder ça, trouver le passage et, moi, j'ai ---

M. RANCOURT: La copie papier, oui.

LA COUR: O.k., bon, bien, c'est tout.

Avez-vous la page donc? Est-ce qu'on a trouvé?

M. RANCOURT: Bien, je sais où est le 'transcript' mais j'ai pas relu pour essayer de trouver ---

LA COUR: C'est ça, donc, j'ai dit: Bien, ça sera une chose on fait pendant l'heure du lunch.

M. RANCOURT: Et c'est peut-être aussi dans le -- dans la décision mais il est clair ---

LA COUR: Oui, mais vous allez trouver pendant l'heure du lunch; o.k.?

M. RANCOURT: Oui, mais ---

LA COUR: Et on va revenir sur ça.

M. RANCOURT: Je comprends mal comment mes amis peuvent maintenant nier ça. Je veux dire c'était ---

LA COUR: Juste montrez-moi qu'est-ce qu'on a dit et, moi, je pourrai décider. Ça c'est mon job.

M. RANCOURT: D'accord.

LA COUR: Voilà.

M. RANCOURT: Je vais tenter de le trouver à l'heure du lunch.

LA COUR: Oui, c'est ça et c'est juste on -- c'est une meilleure utilisation de votre temps, il me semble.

M. RANCOURT: D'accord. Donc, je peux me prendre une note.

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: Il y a aucun doute que cette décision a été prise par -- par rapport à l'expert a été prise par le Juge Beaudoin. C'est dans sa ---

LA COUR: J'accepte ce que vous dites, o.k., je vais laisser aux autres pour peut-être démontrer que c'est pas vrai et, si il y a nécessité, vous pourrez répondre à ça avec votre -- dans votre réplique.

M. RANCOURT: Merci.

LA COUR: O.k.?

M. RANCOURT: Alors, donc, ---

LA COUR: Mais, entre temps, pendant le lunch, vous pourrez trouver vous-même le ---

M. RANCOURT: Oui.

LA COUR: La citation.

M. RANCOURT: Donc, un peu -- pour me réorienter, on était sur la Notice de Motion qui est devant le Juge -- que j'ai déposée devant la Cour ---

LA COUR: Oui.

M. RANCOURT: --- et que le Juge Smith n'a pas voulu cédule.

LA COUR: Oui.

M. RANCOURT: Donc, mon point légal que je viens

de faire c'est que, en mi-motion -- parce que
c'était une seule motion ---

LA COUR: Oui, j'ai compris ça.

M. RANCOURT: Et d'ailleurs -- d'ailleurs -- et
ça c'est important, monsieur le juge, -- pour
vous montrer à quel point c'était une seule
motion, on a ici la décision du Juge Smith sur
les coûts et il traite les trois ensemble comme
une motion sur les coûts.

Alors, je voudrais vous donner cette
décision-là pour que vous voyiez -- et je vais
souligner une phrase dans cette décision-là ---

LA COUR: On sait, on fait ça tout le temps.
Mais peut-être il y a quelque chose à souligner
mais ---

M. RANCOURT: Oui.

LA COUR: --- c'est normal que les juges font --
déterminent les coûts dans tout ce qui se passe à
ce moment-là.

M. RANCOURT: Oui.

Et donc, je vous signale le paragraphe 3 de
cette décision du Juge Smith qui a été relâchée
le 23 octobre 2012 et, dans le paragraphe 3, il
dit:

« In his motion ... »
une seule motion:

« ... Monsieur Rancourt sought to compel
answers to 145 questions which he posed to
four witnesses ... »

LA COUR: Oui.

M. RANCOURT: Donc, tous les témoins de toute la
motion:

« ... which resulted in a refusal (inaudible)
on 86 pages ...”

C'est pour montrer que c'était une seule motion
avec des coûts déterminés après que la motion ait
été finie même si elle avait été vue en partie
par un juge, en partie par un autre juge.

Vous voyez mon point?

LA COUR: Oui, et je pense que c'est pas comme ça
que ça marche mais de toute manière le point est
fait.

M. RANCOURT: O.k. Merci.

Donc, ---

MR. DOODY: Your Honour, perhaps I'm missing
something here but Mr. Rancourt in his Notice of
Motion seeking to set aside the decisions made by
Justice Beaudoin on the Refusals Motion he
brought against my client's witnesses -- that's
-- I called them the "June 20th decision", he
calls it the "August 2nd" decision -- in his
Notice of Motion, the basis for that attack is
reasonable apprehension of bias.

THE COURT: Yes.

MR. DOODY: Point final. That's it.

So I don't know what he's talking about now
if he's trying to submit that -- that something
Justice Smith did in September affects -- I -- if
this is ---

THE COURT: It sounds like he's talking about
another form of procedural fairness but let's
hear him out.

MR. DOODY: But my point is ---

M. RANCOURT: C'était ---

5 **MR. DOODY:** My friend, Mr. Rancourt, made it clear in his Notice of Motion and his Factum his basis was reasonable apprehension of bias. He cannot now be allowed to be heard on some other basis to attack the decision of June 20th.

LA COUR: On va -- I'm going to look at that. I will look at that.

10 I understand very much your submission; all right? I understand that the submissions on reasonable apprehension of bias and we're now going off to an opportunity to expound from the sounds of it; but, in any event, that's -- that's something we'll have to look at.

15 But -- voilà.

M. RANCOURT: Je comprends -- je comprends pas ni le point ni pourquoi il peut intervenir comme ça.

20 **LA COUR:** Bien, il peut intervenir parce que, normalement, ce qu'on dit qu'on va faire, on est limité à ce qu'on peut faire.

25 Moi, je -- moi, je joue un peu avec les règles pour vous, o.k., mais il a raison. Avec un autre avocat ici, boom, done.

M. RANCOURT: Non, mais ---

30 **LA COUR:** O.k.? Parce que si on est -- si on dit qu'on va faire quelque chose et on fait quelque chose d'autre un peu et donc les autres disent: Bien, écoute, on n'est pas ici pour arguer ça comme ça.

Donc, ça, ça c'est la règle ---

M. RANCOURT: Si je peux soulager Monsieur Doody, je me tiens à un seul argument qui est crainte raisonnable ---

LA COUR: Voilà.

M. RANCOURT: --- de partialité.

LA COUR: Voilà, c'est ça.

M. RANCOURT: Il y a rien d'autre sur le tapis.

LA COUR: O.k.

M. RANCOURT: La raison que j'ai soulevé que c'était une seule motion ---

LA COUR: Oui?

M. RANCOURT: --- la raison légale est la suivante: Dans la jurisprudence, quand on soulève un point de crainte raisonnable pendant la motion, elle doit être entendue par la même Cour qui entend la motion. C'est tout.

Et c'était dans -- et c'était pour présenter cet argument que j'ai parlé du fait que c'était une motion en cours.

LA COUR: O.k.

M. RANCOURT: Vous voyez mon point?

LA COUR: Oui. Oui.

M. RANCOURT: Et c'est pour ça que j'ai parlé des coûts pour montrer que c'était une motion, et cetera.

LA COUR: O.k.

M. RANCOURT: Donc, normalement -- et, ensuite, donc, ça doit être entendu par la même Cour et puisque le Juge s'est récusé pour une autre raison, « la même Cour » ça veut dire un autre juge de la même Cour.

Donc, je -- je sou mets que le Juge Smith ---

LA COUR: Avait tort.

M. RANCOURT: --- avait -- avait le droit d'entendre ma motion pour crainte raisonnable de

partialité.

C'était pas une motion -- c'était pour une détermination de cette question-là auquel j'ai droit pendant la motion.

Et pour montrer à quel point sa raison n'était pas vraiment tenable, à mon avis, il a de toute façon pris un item et il l'a fait *de novo*.

LA COUR: O.k., bon, bien, on va regarder ça pas après mais, oui, je comprends le -- votre point de vue et, donc, je sais bien -- c'est bien expliqué, à vrai dire.

M. RANCOURT: C'est ---

LA COUR: Donc, je saisis -- je saisis le point. On peut regarder cette autre matière qui ajoute à votre point de base mais ---

M. RANCOURT: Oui.

LA COUR: --- on verra après le lunch ---

M. RANCOURT: Merci.

LA COUR: --- qu'on a ---

M. RANCOURT: Merci.

LA COUR: --- ciblé le ---

M. RANCOURT: O.k.

LA COUR: --- les phrases.

M. RANCOURT: Donc, on a regardé la motion en question et là on passe au -- donc, on passe à la motion par rapport à la décision du Juge Smith; n'est-ce pas?

LA COUR: Voilà.

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: Donc, j'ai devant moi maintenant le -- le 'Motion Record' pour cette -- non, qu'est-ce que je fais?

LA COUR: Vous avez votre ---

M. RANCOURT: Non, non ---

LA COUR: Vous avez votre Avis de Motion, voilà, et peut-être on va passer maintenant au -- à la lettre du -- du Juge Smith; non?

M. RANCOURT: Excusez-moi, j'étais désorienté quelques secondes.

LA COUR: O.k.

M. RANCOURT: C'est parce qu'il y a deux fois le Juge Smith: il y a une fois dans cette même motion et puis il y a une autre fois dans une motion séparée.

LA COUR: O.k.

M. RANCOURT: Bon, là -- là, j'ai eu un -- un lapsus là, excusez-moi une seconde. Je prends quelques instants pour m'orienter.

LA COUR: On est toujours au 27 juillet, je pense?

M. RANCOURT: Monsieur le juge, je vais vous le dire que si jamais j'avais l'occasion de faire une recommandation à la Cour par rapport à ces procédures, je dirais que, quand une personne est auto-représentée, on essaie d'avoir une seule motion par jour. Ça serait ma recommandation.

LA COUR: Pas -- pas possible.

Il y a le monde qui demandent nos services là.

M. RANCOURT: Oui.

Alors, je comprends les contraintes physiques mais ---

LA COUR: Oui, mais c'est tout.

M. RANCOURT: O.k., voici.

LA COUR: Où est-ce qu'on trouve cette lettre?
Je suis perdu dans tout cela.

M. RANCOURT: Oui.

LA COUR: La lettre de base où il a refusé celui
de ---

M. RANCOURT: Si vous permettez, monsieur le
juge, je vais le présenter dans -- dans un --
dans l'ordre que je ---

LA COUR: O.k.

M. RANCOURT: --- propose.

O.k., donnez-moi juste quelques instants là,
je m'oriente.

MR. DEARDEN: Your Honour, just for your notes,
if you find my factum, it says: "Defendants
Motion for Leave to Appear - Justice Smith's July
31st letter ---

THE COURT: I've got it here.

MR. DEARDEN: The fifth -- the fifth tab, by the
way, will give you a transcript of the July 27th
proceeding which deals with the so-called "*de
novo* argument" and the letter ---

THE COURT: So just -- just hold on there,
please. So in the Plaintiff's -- what tab?

MR. DEARDEN: So Tab 5 of -- and this is the --
what I'll call "the July 31st letter Factum".

THE COURT: Yes.

MR. DEARDEN: Okay?

At Tab 5, you'll find the transcript of July
27th dealing with this *de novo* issue that Mr.
Rancourt has been addressing.

THE COURT: All right, we'll look at that at
lunchtime.

5 **MR. DEARDEN:** Tab 1, you will have both Justice Smith's July 31st letter to Mr. Rancourt and, in the second page of Tab 1 of that Factum, you'll find Mr. Rancourt's letter of July 31st to Justice Smith.

THE COURT: Okay, thanks.

Voilà.

(COURTE PAUSE/SHORT PAUSE)

10 **M. RANCOURT:** O.k., oui, en fait, c'est la lettre du -- du Juge Smith est à mon onglet 9 ---

LA COUR: Oui.

M. RANCOURT: --- dans le 'Motion Record'.

LA COUR: Oui.

15 **M. RANCOURT:** O.k.

O.k., à mon onglet 5 -- non, est-ce que c'est ça? Ah oui, à l'onglet 5 ---

LA COUR: Oui.

M. RANCOURT: --- de mon factum pour la motion qui est devant nous en ce moment, ---

20 **LA COUR:** Oui.

M. RANCOURT: --- il y a la lettre de moi au Juge Smith qui fait la demande en question.

LA COUR: O.k. Voilà.

25 **M. RANCOURT:** O.k.?

Donc, ça c'est à l'onglet 5. Et vous voyez que c'est une lettre du 31 juillet 2012 ---

LA COUR: Voilà.

M. RANCOURT: --- et, là, j'explique très simplement en cinq points ma demande.

30 J'explique que le 30 juillet j'ai servi et j'ai déposé devant la Cour cette motion qu'on vient de regarder ensemble ---

LA COUR: M'hm.

M. RANCOURT: --- pour crainte raisonnable de partialité et, donc, qui amènerait à mettre de côté toutes les décisions du Juge Beaudoin.

J'explique au deuxième point que j'ai demandé au Juge Hackland et au Juge Smith, à travers un courriel envoyé au 'Trial Coordinator', pour cédule cette motion-là.

Ensuite, j'explique ce qui s'est passé le 27 juillet dans lequel le Juge avait mis des dates pour les différentes choses dans la motion qui continue.

LA COUR: Est-ce qu'on va regarder ce qu'il a dit le 27 donc?

M. RANCOURT: Le 27?

LA COUR: Oui. La transcription?

Et est-ce que ça se trouve seulement -- ou le meilleur endroit c'est le factum de Gowlings -- de ---

M. RANCOURT: C'est pas le factum, c'est le 'Motion Record'.

Mais on va pas regarder ça tout de suite ---

LA COUR: Vous dites 'factum', c'est 'Motion Record'?

M. RANCOURT: C'est quoi?

LA COUR: C'est 'Motion Record'?

M. RANCOURT: Oui. C'est ---

LA COUR: Il y a pas de 'Motion Record' ---

M. RANCOURT: Oui -- um, non, c'est ---

LA COUR: Factum.

MR. DOODY: Factum.

LA COUR: Factum.

M. RANCOURT: Le 'Motion Record' de Monsieur Doody -- si vous voulez la transYeahecription du 27, c'est le -- c'est l'onglet 19 du 'Motion Record' de Monsieur Doody.

LA COUR: Ah, o.k.

MR. DOODY: The 27th?

THE COURT: Yeah.

MR. DOODY: It's Tab 19.

THE COURT: Nineteen (19).

M. RANCOURT: Oui, 19, c'est ça. Oui, c'est ça.

THE COURT: Two books is enough here. Okay, yes, voilà.

M. RANCOURT: O.k., donc, dans cette lettre que j'ai écrit au Juge Smith, le point important c'est le point 2:

« I have asked Regional Justice Hackland and yourself via e-mail to the Trial Coordinator to schedule my Reasonable Apprehension of Bias ... as soon as is practical and prior to ... »

LA COUR: Attends une minute là, j'ai -- c'est dans votre 'factum' parce que -- j'ai mis ça de côté.

Voilà, c'est celui-là. Oui, o.k., voilà.

M. RANCOURT: Donc, nous sommes à l'onglet 5 de mon factum.

LA COUR: Oui.

M. RANCOURT: Imaginez le -- d'accord.

LA COUR: Oui.

M. RANCOURT: Donc, le 31 juillet, j'ai envoyé cette lettre ---

LA COUR: Oui.

M. RANCOURT: --- et c'est le paragraphe 2 qui est la demande clé qui est pertinente pour nous aujourd'hui:

« I have asked Regional Justice Hackland and yourself via an e-mail to the Trial Coordinator to schedule my Reasonable Apprehension of Bias Motion as soon as is practical and prior ... »

ça c'est important:

"... to other motions in the action for obvious reasons."

Et, pour moi, les raisons évidentes sont que on est en mi-motion, je mets de l'avant cette demande de crainte raisonnable de partialité et, donc, il est nécessaire de comprendre où on est avec les décisions dans cette motion-là. Il y a devant la Cour cette demande de crainte raisonnable de partialité qui implique toutes les décisions faites ou non faites par le Juge Beaudoin.

Donc, je fais cette demande-là au paragraphe 2 dans cette lettre.

LA COUR: Oui.

M. RANCOURT: Ensuite, si vous tournez la page -- on reste à l'onglet 5 ---

LA COUR: Oui.

M. RANCOURT: --- vous avez la réponse du Juge Smith.

LA COUR: Voilà.

M. RANCOURT: O.k.?

Et donc, il le dit de la façon suivante:

« Further to your facts of July 31st, I wish

to clarify, as I advised you, as a motion, that I have no jurisdiction to satisfy decisions of Justice Beaudoin and I will not -- I will not re-schedule any motion for this purpose."

Alors, je pense que le Juge Smith a mal compris peut-être que ce que je demandais c'était une détermination judiciaire sur la question de crainte raisonnable de partialité; que c'était essentiel que ça se fasse immédiatement parce que la motion était en cours et il a refusé de cédule une telle motion.

Il a donné comme raison que il avait pas la juridiction d'éliminer des décisions du Juge Beaudoin.

Mais ce n'est pas comme ça que ça marche parce que, quand la même Cour entend et accepte qu'il y avait crainte raisonnable de partialité, à ce moment-là, automatiquement, les décisions de ce Juge tombent, ne peuvent pas tenir.

Donc, je ne demandais pas d'examiner les décisions, je ne demandais pas de trouver qu'il y avait une erreur dans ces décisions-là ---

LA COUR: Oui.

M. RANCOURT: --- je demandais simplement une détermination pour crainte raisonnable de partialité.

LA COUR: Je comprends vos argumentations.

M. RANCOURT: Merci.

Ensuite, juste pour terminer ce qui est devant nous, j'ai ensuite écrit au Juge Smith pour expliquer ce point de vue ---

LA COUR: M'hm.

M. RANCOURT: --- le 1^{er} août 2012.

Et ça, c'est à l'onglet 10 de mon 'Motion Record'. C'est au Tome 2, à l'onglet 10.

LA COUR: Voilà.

M. RANCOURT: Vous l'avez?

LA COUR: Je pense que oui.

Oui.

M. RANCOURT: Alors, là, je présente la réponse à cette lettre courte du Juge Beaudoin du 31 juillet et je demande que le Juge Smith clarifie cette réponse très courte qui m'apparaissait, moi, comme ambiguë et que le Juge Smith donne des raisons pour sa décision -- sa décision par rapport au premier item dans sa lettre ---

LA COUR: M'hm.

M. RANCOURT: --- qui est justement de ne pas cédule ma motion.

LA COUR: Oui.

M. RANCOURT: Et je rappelle au Juge Smith la jurisprudence par rapport à crainte raisonnable.

LA COUR: Oui.

M. RANCOURT: Et je dis que cette jurisprudence s'applique aux motions et je donne la jurisprudence et je dis, à la page 2 de cette lettre:

« A finding of a reasonable apprehension of bias in relation to a Judge requires the annulling of all decisions made by the Judge in the case ... »

LA COUR: Là, vous commencez à répéter.

Je comprends bien qu'est-ce que -- qu'est-ce

qu'on ---

M. RANCOURT: O.k., c'était simplement pour ---

LA COUR: Oui.

M. RANCOURT: --- vous signaler que j'ai demandé des clarifications.

LA COUR: Maintenant, vous voulez citer l'autorité sur laquelle vous vous basez?

M. RANCOURT: Oui, alors, je suis prêt à parler des autorités.

LA COUR: Oui, voilà, c'est ça. À ce moment, sur ce sujet, il me semble, c'est que le moment est propice.

M. RANCOURT: O.k.

Donc, monsieur le juge, je pense qu'on a fait la -- le tour de beaucoup des -- des faits clés ---

LA COUR: Oui.

M. RANCOURT: --- et on peut parler des autorités.

LA COUR: Oui, surtout les procédures.

M. RANCOURT: Pardon?

LA COUR: Surtout les procédures.

M. RANCOURT: Oui.

LA COUR: La procédure par laquelle un autre Juge devrait statuer sur ce problème.

M. RANCOURT: Oui.

Alors, pour ça, je vais m'orienter d'abord --

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: O.k., alors, dans mon factum, pour la motion qui est devant nous ---

LA COUR: Oui. Laquelle? Je pense qu'on a ---

M. RANCOURT: J'aimerais expliquer quelque chose

d'important, un point important.

C'est parce que mes deux amis vont avancer --
ont avancé que la limite de temps pour mettre de
l'avant la motion actuelle ---

LA COUR: Passons à ça sur un autre moment.

M. RANCOURT: Oui.

LA COUR: D'abord, penchez sur le problème dont
on a suivi déjà et ça m'a -- on va ---

M. RANCOURT: J'ai une raison de dire ça à ce
moment-ci, monsieur le juge.

LA COUR: O.k., quelle est la raison?

M. RANCOURT: La raison est la suivante: Par
rapport au test pour l'extension de temps ---

LA COUR: Oui?

M. RANCOURT: --- c'est dans le contexte de ce
test-là qu'on peut examiner les mérites de la
motion parce que c'est une motion pour demander
appel.

Normalement, on ne regarde pas ---

LA COUR: Mais ça c'est pour moi à décider
aujourd'hui. C'est ma décision.

M. RANCOURT: Oui.

LA COUR: Vous parlez de ma décision.

M. RANCOURT: Oui.

LA COUR: Oui, oui, donc, ça -- on va regarder ça
après. Moi, je veux que vous finissiez avec
qu'est-ce qu'y se passait chez le Juge Smith.

M. RANCOURT: Oui.

Et donc, pour expliquer la jurisprudence, je
dois parler -- je l'ai expliquée la jurisprudence
dans la section qui parle des mérites qu'on
demandait la -- et c'est pour ça je veux faire

appel à cette section-là dans mon factum. C'est tout.

LA COUR: Je suis intéressé juste à ce que Smith a fait, pourquoi il aurait dû statuer sur la question. C'est ça.

Laisse tomber toute question de temps pour le moment donné, donc, j'aimerais juste comprendre qu'est-ce qu'y se passe chez Smith -- chez le Juge Smith concernant, lui, il aurait dû statuer sur ce problème de pas dire, bon, ça devrait aller en appel.

M. RANCOURT: Oui. Donnez-moi un instant, je comprends maintenant votre question.

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: O.k., donc ---

LA COUR: On est où? On est dans votre 4? Non?

M. RANCOURT: Donc, là, j'ai trouvé la place dans mon factum qui se rapproche le plus de votre question précise.

LA COUR: Ça c'est celui que j'en ai ---

M. RANCOURT: Il y a un seul factum pour la motion qui est devant nous en ce moment.

LA COUR: O.k., donc, ça c'était le 'Leave to Appeal - September 6th, 2012'?

M. RANCOURT: Non, ça c'est 'Doody's Party Factum - Leave to Appeal - Reasonable Apprehension of Bias'.

LA COUR: 'Reasonable Apprehension of Bias', voilà, excusez-moi là. Donc, il y a -- donc, il y a deux factum devant moi.

O.k., allez-y.

M. RANCOURT: O.k., ça c'est le seul factum pour

LA COUR: Pour cette question.

M. RANCOURT: Oui.

LA COUR: O.k.

M. RANCOURT: Au paragraphe 85, ---

LA COUR: Oui?

M. RANCOURT: --- à la page 24 de ce factum ---

LA COUR: Quel 24? Donc, o.k., 85, c'est ça, de toute manière?

M. RANCOURT: Le paragraphe 85 ---

LA COUR: Oui.

M. RANCOURT: --- à la page 24 de 39 pages ---

LA COUR: O.k.

M. RANCOURT: --- dans le factum.

LA COUR: O.k.

M. RANCOURT: N'est-ce pas?

LA COUR: Oui.

M. RANCOURT: Je dis:

« Once a party expresses an intention to bring a recusal motion on the grounds of reasonable apprehension of bias, such a motion must be heard before a judge makes any further decisions in the case affecting the rights of a party. When such a motion is brought in mid-proceedings, the presiding judge is required to hear the motion. »

Et ça c'est juste mon résumé bref.

LA COUR: Oui.

M. RANCOURT: Nous allons aller regarder à l'autorité parce que il y a des -- il y a des points pertinents dans -- dans l'autorité.

LA COUR: Je regarderai ça pendant l'heure du

lunch; o.k.? Voilà.

M. RANCOURT: Ah, o.k.

LA COUR: Est-ce qu'il y a des autres causes sur lesquelles vous vous basez?

M. RANCOURT: Oui.

LA COUR: Sur ce point ici là.

M. RANCOURT: Sur le -- probablement mais là vous me posez une question précise, c'est pas comme ça que j'avais prévu de le -- de le regarder alors je peux pas répondre à votre question ---

LA COUR: Bon, c'est une autre question à regarder pendant l'heure du lunch.

M. RANCOURT: Oui.

LA COUR: Voilà. Indiquez ça sur votre liste ---

M. RANCOURT: Oui.

LA COUR: --- dans vos -- l'autre pause portant sur la -- la question de procédure à suivre selon la révision de la décision du Juge Smith.

M. RANCOURT: Oui, je l'ai signalé.

LA COUR: Voilà, vous avez deux questions, là.

M. RANCOURT: Deux questions.

LA COUR: O.k.?

M. RANCOURT: Oui.

LA COUR: Donc, je pense on a vidé pas mal les faits, est-ce qu'on -- est-ce qu'on veut passer aux faits de la dernière décision?

La réponse est 'oui'.

M. RANCOURT: Oui.

LA COUR: Je préconise -- je préconise fortement qu'on passe à cette question-là.

M. RANCOURT: À quelle question, là?

LA COUR: À la troisième décision.

M. RANCOURT: C'est-à-dire l'autre motion?

LA COUR: Oui, le 6 septembre.

M. RANCOURT: Je préfère faire une motion après l'autre. J'aimerais entendre les -- les présentations ---

LA COUR: Non, on va faire tout ça dans un seul coup.

Je vous ai remis -- je vous ai donné le temps et, donc, il en reste 25 minutes. C'est à -- rappelez-vous que, moi, j'ai tout -- tout votre -- vos présentations, tout ça, devant moi.

M. RANCOURT: Oui.

LA COUR: Donc, ce que vous faites ici c'est pour assurer que je saisis les grands points et, donc, moi, je vais fouiller là-dedans et trouver et lire les causes. Ça c'est quelque chose qui ne finit pas tout de suite.

M. RANCOURT: M'hm.

LA COUR: O.k.?

M. RANCOURT: Monsieur le juge, j'aimerais demander que, donc ---

LA COUR: Vous voulez l'heure du lunch maintenant?

M. RANCOURT: Oui.

LA COUR: O.k.

Donc, on va -- on va -- il est quelle heure exactement? Oui, c'est une heure moins vingt, donc, on va -- on va prendre une pause pour le lunch et on va revenir, donc, à deux heures moins vingt.

M. RANCOURT: Est-ce que ça serait possible, vu que j'ai beaucoup de recherches à faire de me

donner 15 minutes de plus?

LA COUR: Bien, c'est juste que ça -- ça -- c'est notre habitude normalement de prendre une heure parce que ça nous donne assez de temps pour faire tout ce qu'il faut à faire là.

Donc, je suis à tout ni moins les règles de base qui s'imposent à tout le monde.

Et c'est difficile pour le juge aussi. Nous, on devra faire toutes nos affaires dans une heure souvent aussi, juste pour que vous sachiez, parce qu'on commence à deux heures et on a souvent des choses qu'il faut lire.

Donc, c'est pas comme j'impose quelque chose sur vous qui n'est pas sur moi.

M. RANCOURT: J'aimerais demander une -- une permission spéciale à la Cour.

LA COUR: Oui.

M. RANCOURT: Si c'était possible parce que j'ai des recherches à faire et les documents sont ici si je pouvais rester dans la salle pendant l'heure du lunch.

LA COUR: J'ai aucune idée comment ça marche mais si c'est possible ---

M. RANCOURT: Parce que, normalement, ils aiment barrer la salle et nous exclure, et cetera.

LA COUR: Je pense vous êtes mieux de prendre vos affaires et vous mettre dans une petite salle à côté.

M. RANCOURT: Ah, est-ce qu'il y a une salle à côté?

LA COUR: Oui, il y a une salle à côté et vous devrez réserver ça maintenant. O.k.?

Donc -- et on va -- on va prendre ...

Mr. Dearden, so I have twenty to twelve, we'll come back at a quarter to two; o.k.? A quarter to two, yes, that's right.

MR. DEARDEN: Your Honour, could I hand you -- I'll be arguing the July 31st letter issue, Mr. Doody will be arguing most of the -- what I'll call the 'Apprehension Bias issue'.

THE COURT: Okay.

MR. DEARDEN: And I'll be dealing with the July 31st letter.

So my Compendium, if I could hand to the Court?

THE COURT: The Compendium? All right.

Have you provided it to ---

M. RANCOURT: Non.

MR. DEARDEN: Right now, I'm going ---

THE COURT: Right now you're going to, good.

MR. DEARDEN: And Mr. Doody.

LA COUR: Et juste pour que vous compreniez bien, un 'compendium' c'est juste on rassemble -- on rassemble tous les documents qui sont devant -- au lieu de me faire chercher des choses, on a des pages et, donc, on -- mais c'est des -- c'est des documents tirés du document de base.

Donc, il y a pas de nouveaux documents là-dedans.

I'm right, eh, there's no new documents in there whatsoever?

MR. DEARDEN: No new documents.

Your Honour, I may as well give you, I've prepared the Compendium for the September 6th ---

THE COURT: You may as well pass them all, of course, yes.

MR. DEARDEN: --- as well.

THE COURT: That's fair to your friend too to a certain extent but ...

It's generous to your friend, it's not required. I understand that.

Okay? So we're standing down, back at a quarter to two.

MR. DEARDEN: Thank you, Your Honour.

THE COURT: And I should probably take something with me here.

(SHORT PAUSE/COURTE PAUSE)

THE COURT: And what is your Factum on the third issue? Is it "Joanne St. Lewis Cross-examination"? That would be the one for September 6th?

Yes, it's right there, September 6th. Thank you.

THE COURT CLERK: Veuillez vous lever. Please rise.

--- L'audience est suspendue à 12h41

--- L'audience est reprise à 13h45

THE COURT CLERK: Alors, s'il vous plaît, veuillez vous lever. Please rise.

THE REGISTRAR: This Court is now reconvened. Cette cour est maintenant recommencée. Veuillez vous asseoir. Please be seated.

(SHORT PAUSE/COURTE PAUSE)

M. RANCOURT: Bonjour.

LA COUR: Bonjour. Bon après-midi.

M. RANCOURT: Pardon?

LA COUR: Bon après-midi.

M. RANCOURT: Merci beaucoup.

Bon, mes lunettes.

LA COUR: Donc, nous sommes -- il me semble que vous aurez jusqu'à 2h30 -- non, 2h15, je pense, c'est ça?

Parce qu'on a comptabilisé le peu de temps, là, qui reste et, donc, ça vous -- et ça, donc, ça donne -- ça vous donne un autre deux heures de votre côté, je pense, et un autre 15 minutes pour la réplique.

M. RANCOURT: Pardon? Ça me donne?

LA COUR: Un autre 15 minutes en réplique après que ils ont fait leurs présentations parce que vous avez toujours la possibilité de ---

M. RANCOURT: Mais là, je continue ma présentation.

LA COUR: Oui, c'est ça, pour une autre demi-heure.

M. RANCOURT: Pour une autre demi-heure?

LA COUR: Oui.

C'est pourquoi je pense peut-être on devrait passer au troisième décision.

M. RANCOURT: Oui.

Alors, avant -- par rapport à cette question procédurale de temps ---

LA COUR: Oui?

M. RANCOURT: --- j'aimerais souligner quelque chose de très important: Dans la première motion que nous avons vue ce matin ---

LA COUR: Oui?

M. RANCOURT: --- il y a toute la question de limite du temps qui est une grande question qui

occupe beaucoup les factum des trois -- des trois parties et que je n'ai même pas touchée encore.

Alors, j'ai préparé des points clés par rapport à cette question-là mais ça va prendre de les présenter parce que il y a des -- il y a quand même des items nouveaux de présentation ---

LA COUR: Laissez-moi vous soulager un peu.

M. RANCOURT: Oui.

LA COUR: On devrait les entendre d'abord, o.k., et, à ce moment, vous pourrez avoir du temps de répondre en réplique; o.k.?

Ça veut dire: Laissez-moi entendre leur argumentation.

M. RANCOURT: Oui.

LA COUR: O.k., à ce moment, si je trouve que c'est nécessaire, je vous demanderai de répondre.

M. RANCOURT: J'avais préparé dans mon factum toutes les raisons pour lesquelles ---

LA COUR: J'ai vu ça aussi là.

M. RANCOURT: O.k.

LA COUR: Oui. Vous êtes mieux de s'attendre -- de se baser sur le fond du problème ---

M. RANCOURT: O.k.

LA COUR: --- que des questions procédurales.

M. RANCOURT: Donc, cette question procédurale, je la ---

LA COUR: Ça sera remis à vous ---

M. RANCOURT: --- en réponse.

LA COUR: Ça sera remis à vous -- ça sera remis à vous pour réponse.

M. RANCOURT: D'accord.

Alors, merci.

LA COUR: Parce que, à ce moment, je pourrai -- si j'ai des problèmes, je pourrai cibler un peu le problème pour vous aider à répondre.

M. RANCOURT: Oui.

LA COUR: Comprenez-vous là?

M. RANCOURT: Oui. M'hm. Merci.

Donc, avant le -- avant le lunch, vous -- je m'étais engagé à faire deux recherches que j'ai réussi à faire.

LA COUR: Oui.

M. RANCOURT: Et, donc, je voudrais rapporter sur ces points-là qui -- dont le premier qui est un point très important.

Donc, je me réfère à l'onglet 19 du 'Motion Record' de Monsieur Doody.

LA COUR: Oui, je l'ai.

M. RANCOURT: Parce que, à l'onglet 19, il y a le procès-verbal pour le 27 juillet; n'est-ce pas?

LA COUR: Oui.

M. RANCOURT: Alors, j'ai donc trouvé précisément la discussion par rapport à cette question de '*de novo*'; n'est-ce pas?

LA COUR: Voilà.

M. RANCOURT: Alors, je vous amène à la page 58.

Est-ce que vous y êtes?

LA COUR: Oui, oui, j'y arrive là.

Oui, je suis là.

M. RANCOURT: Alors, en bas de la page 58, le dernier paragraphe en bas de page, je vais lire très rapidement:

« ... et à la question 7 ... »

c'est moi qui parle en ce moment ---

LA COUR: O.k.

M. RANCOURT: --- et je dis:

« ... et à la question 7 ... »

ça c'est la question, monsieur le juge, qui est précisément celle qui est impactée de façon primordiale par mon expert qui a été exclu pour des raisons techniques par le Juge Beaudoin.

Donc, il est -- il est, à mon avis, impossible d'adresser cette question 7 sans avoir une détermination juste qui n'est pas teintée par la crainte raisonnable de partialité par une apparence de conflit d'intérêt qui, à mon sens, est très propre -- qui n'est pas teinté par ça.

Ça prend une décision, une évaluation, de: Est-ce que mon expert-témoin et son affidavit peuvent être acceptés?

Si mon expert-témoin est accepté, ça voudrait dire qu'il y a eu une communication directe entre Monsieur Rock et Monsieur Dearden et que cette communication était de la nature suivante -- et le Tribunal dit:

« ... mais ça, c'est une question aussi basée sur une décision du Juge Beaudoin. Comme je viens de dire, moi, je n'ai pas l'intention de casser une -- ça va faire partie de votre appel de sa décision. »

Donc, il a fait une décision et il a fait erreur. Bon.

Puis, ensuite, il dit -- et, moi, je continue. il dit un peu plus bas, à la ligne 22:

« Ce n'est pas -- ce n'est pas moi qui -- qui ... »

et un peu plus bas, à la ligne 27:

« ... je n'ai pas l'autorité de le faire.

C'est ça, je viens de vous le dire plusieurs fois que je n'ai pas -- ce n'est pas mon rôle ici, pas mon rôle de le faire. »

Et, moi, je dis:

« Non, je ne vous ai pas demandé de faire ça. »

Vous voyez?

LA COUR: Oui.

M. RANCOURT: Et, ensuite, le Tribunal dit:

« Donc, c'est relié à cette -- c'est relié à cette même question, ça veut dire? »

Et je dis:

« Oui. Mais par rapport à cette question 7, monsieur le juge, ce que je demanderais -- sans rejeter la décision du Juge Beaudoin -- est-ce que vous pourriez donner un (inaudible) sur l'affidavit de mon expert dans ... »

Et il dit, le Tribunal dit:

« Non, je ne peux pas. »

Et je dis:

« Pour -- pour informer? »

Et le Tribunal dit:

« Faire la même -- c'est une question de *res judicata*. On vient de passer à travers ce concept-là déjà, donc, ça, ça déjà été tranché. »

Et puis, ensuite, Monsieur Dearden intervient, à la ligne 20, à la page 60, et Monsieur Dearden dit:

« It's my position, Your Honour, as you look at it, *de novo*, as you've looked at it, *de novo*, he's bringing ..."

Et le Tribunal dit:

"I looked at it *de novo*?"

Et là, Monsieur Dearden dit un peu plus bas:

« So go ahead, let him try to convince you that the Louis Béliveau so-called expert affidavit meets the *Mohan* criterion."

Et la Cour dit:

"Okay. Well, then, I'll decide it."

Donc, là maintenant, le Juge a changé d'idée. En premier, il -- c'était *res judicata*, il ne pouvait pas, il n'avait pas juridiction.

Monsieur Dearden suggère qu'on le fasse *de novo* et, maintenant, il dit:

« Okay. Well, then, I'll decide it. »

Ça c'est en haut de la page 61.

Ensuite, il dit « Okay », un peu plus bas.

Et le Tribunal dit à la ligne 12 de la page 61:

« Donc, il est d'accord que je l'a tranché. »

Ça c'est lu tel que dit.

LA COUR: Oui, mais il faut comprendre, en litige civil, si les parties décident -- si les parties décident ensemble et permettent un juge à faire quelque chose, à moins que c'était vraiment une question qui est hors sa compétence -- Cour fédérale ou quelque chose comme ça -- ils peuvent le faire là.

Donc, plus ou moins, si les parties ne

s'objectent pas, bon, bien, il dit: Bien, o.k., si vous voulez, je vais le faire.

M. RANCOURT: Mais ---

LA COUR: C'est ça. Ça marche comme ça en civil. Normalement, si -- si c'est sous consentement, bon bien, les parties sont d'accord et on va en avant avec ça et le Juge dit: Bien, o.k., si vous voulez, je vais statuer sur l'affaire s'il faut le faire.

Mais ça veut pas dire que -- ce que -- son point de vue original a changé, ça veut dire que, bon, bien, vu que les parties sont -- disent, bien, deuxième opinion si vous voulez -- c'est comme un médecin -- bon, je vais la donner.

M. RANCOURT: D'accord.

Mais, avec tout respect, monsieur le juge, si c'est une question de juridiction qui est la raison que le Juge Smith donne pour ne pas regarder ces autres décisions -- c'est-à-dire qu'il donne plus tard -- à ce moment-là, il ne suffit pas que les deux partis soient d'accord.

Alors, ---

LA COUR: Tout ce que je dis c'est on a -- trying to convince him that expert under *Mohan* criteria relevant.

Tu sais, c'est une question de preuve; o.k.: Bien, o.k., je vais le faire si vous voulez, hein? Moi, je vais le rejeter à cause une fois ça suffit. Mais, qu'est-ce que vous voulez?

Mais je pense pas que ça porte sur -- vous tenter de lire, voilà, c'est -- il a fait *de novo* et des choses. Non. Moi, je l'ai -- il a dit

‘non’ et il va le faire parce que l’autre partie a dit ‘oui’. « Go ahead, do it. Go ahead, do it. »

Bon, bien, c’est comme ça.

M. RANCOURT: Alors, mon seul point c’était que il y a eu des décisions du Juge Beaudoin qui ont été fait *de novo* par la même Cour. C’est ça mon point.

LA COUR: Ça, c’est ce juge ici là. Ça c’est cette question ici là.

M. RANCOURT: Oui.

LA COUR: Oui.

M. RANCOURT: Mon point est ---

LA COUR: Un point de preuve.

M. RANCOURT: Mon point est que la même Cour ---

LA COUR: Oui.

M. RANCOURT: --- a eu la juridiction de trancher une question qui avait déjà été tranchée par le Juge Beaudoin. Refaite.

LA COUR: Je ne sais pas quel sera l’impact du fait qu’il a décidé de le refaire, o.k., mais il n’était pas en *de novo*, il avait raison -- par la raison, il était *res judicata* et c’est juste parce que on voulait avoir une deuxième opinion sur cette question de preuve -- c’est une question de preuve -- et c’est, voilà, c’est comme ça que ça marche.

Donc, moi, je regarde ça pas comme: Ah, il a dit que c’est -- moi, je suis le même juge que -- ça c’est à lui de décider *res judicata*.

Ça c’est ce que, moi, je prends de cette -- ce passage.

M. RANCOURT: M'hm.

LA COUR: O.k.

Mais comme je dis, si les parties veulent faire les choses ensemble, les ---

M. RANCOURT: Oui.

LA COUR: --- le Tribunal pourrait le faire comme ça. C'est parce qu'ils ont limité par il peut pas revenir, il peut pas dire ça et, donc, moi, je lis ça pas du tout comme -- comme vous avez lu là.

M. RANCOURT: O.k.

LA COUR: On accommode -- en civil, en accommode les parties.

M. RANCOURT: Oui.

LA COUR: C'est ça la réalité.

M. RANCOURT: Alors, mon -- mon point c'est que -- ah, oui, donc, le deuxième point que vous m'avez demandé de chercher pendant le lunch ---

LA COUR: Oui?

M. RANCOURT: --- c'était la chose suivante.

LA COUR: Oui.

M. RANCOURT: C'était la loi qui fait que, en motion, la Cour -- la même Cour -- doit évaluer une question de crainte raisonnable de partialité.

LA COUR: Oui.

M. RANCOURT: N'est-ce pas?

LA COUR: Oui.

M. RANCOURT: Et, donc, je me réfère à mon livre des autorités et je vais m'y référer à quelques reprises dans le temps que j'ai.

LA COUR: O.k.

M. RANCOURT: Et ce livre ---

LA COUR: C'est juste, qu'on me donne le temps de repérer dans vos documents ---

M. RANCOURT: Alors, c'est dans la pile pour une motion qui est une motion de 'Stay' -- 'Stay Motion'. Donc, c'est peut-être une pile un peu plus loin.

LA COUR: Parmi vos autorités, vous avez un livre que c'était vos autorités?

M. RANCOURT: J'ai un livre qui s'appelle « Defendant's Book of Authorities ».

MR. DOODY: Your Honour, I was not served with any such book of authorities nor, I understand, was my friend, Mr. Dearden.

M. RANCOURT: C'est ---

LA COUR: Mais là -- trouver d'abord.

M. RANCOURT: C'est faux parce que j'ai -- j'ai les affidavits de service. J'en ai parlé ce matin.

MR. DOODY: Service of the -- of the Book of Authorities?

M. RANCOURT: Oui.

MR. DOODY: Produce it, please.

M. RANCOURT: Oui, je vais faire ça aussitôt que le Juge me le dirige.

MR. DOODY: If I'm wrong, I will -- I will apologize but I certainly don't have ---

THE COURT: Well, it's not the end of the world serving authorities but it would ---

MR. DOODY: No, no. No.

THE COURT: It certainly should happen; you know? Yeah.

No, I know. I don't seem to have it either, to tell you the truth.

M. RANCOURT: Alors, si je peux expliquer, j'ai ---

LA COUR: Ça l'air de quoi là votre Livre d'autorités là?

Oh là là. Non, ça c'est pas devant moi.

M. RANCOURT: Il y a 12 onglets. Il y a 12 onglets et c'est dans la pile « Stay Pending Leave to Appeal » que j'ai demandé qui soit devant la Cour.

LA COUR: Peut-être on m'a pas -- peut-être y m'ont pas remis ce document mais, moi, je l'ai pas ici.

Mais de toute manière, quelle est l'autorité? Ça, c'est pas un problème. Ça c'est gentil de servir mais ---

M. RANCOURT: J'ai fait une compilation de motions et j'ai demandé que ce document soit devant la Cour.

Mes amis ont été servis avec ces documents-là le 4 septembre ---

LA COUR: Et vos -- ah, les avocats font -- tout le monde font des erreurs de temps à autre.

M. RANCOURT: Oui.

LA COUR: Ça c'est pas un problème; o.k.?

M. RANCOURT: Oui.

LA COUR: Surtout avec les questions des autorités parce que ---

M. RANCOURT: O.k.

LA COUR: --- c'est quelque chose que je peux lire moi-même.

M. RANCOURT: Donc, -- et, en plus, ce sont toutes les mêmes autorités que je cite dans mon factum.

LA COUR: O.k.

M. RANCOURT: Donc, il y a rien de neuf ici là.

LA COUR: Pardon, mais ça -- donc, ça -- ça c'est certainement suffisant normalement.

Donc, « Moving Party's Factum, September 6 »? Voilà. C'est ça?

M. RANCOURT: Il y a rien de neuf.

LA COUR: O.k.

C'est où, donc, ça se trouve?

M. RANCOURT: Donc, tout -- non, je veux dire je les cite, je veux pas dire que je les ai inclus dans mon ---

LA COUR: Non, non, mais vous citez, ça -- normalement, juste le fait que vous citez.

M. RANCOURT: Oui.

Et donc, je cite -- l'autorité que je vais vous signaler que vous m'aviez demandé de rechercher pendant l'heure du lunch ---

LA COUR: Oui?

M. RANCOURT: --- je la cite au paragraphe 85 de mon factum.

LA COUR: Quatre-vingt-cinq (85).

M. RANCOURT: Et je vous -- je vous ai signalé ça ---

LA COUR: Quatre-vingt-cinq (85)?

M. RANCOURT: Oui.

LA COUR: "Moving Party's Factum - Leave to Appeal - September 6, 2012 - Justice Smith"?

M. RANCOURT: Non.

LA COUR: C'est un autre.

M. RANCOURT: Non, c'est l'autre factum de la première motion de ce matin.

LA COUR: Oui. Voilà, o.k., je l'ai ici là.

M. RANCOURT: « Leave to Appeal - Reasonable Apprehension of Bias ».

LA COUR: Quatre-vingt-six (86)?

M. RANCOURT: Quatre-vingt-cinq (85).

LA COUR: Cinq (5).

M. RANCOURT: Le paragraphe 85 est à la page 24 de ce factum et je vous ---

LA COUR: O.k. Oui.

M. RANCOURT: --- ai signalé ce -- ce paragraphe ---

LA COUR: « *Button v. Jones* », on a déjà parlé de *Button v. Jones*.

M. RANCOURT: Exactement.

LA COUR: Oui.

M. RANCOURT: Et maintenant, je veux nous amener aux énoncés précis de *Button v. Jones*.

LA COUR: O.k.

M. RANCOURT: Et c'est à l'onglet ---

LA COUR: Avez-vous ça parmi vos autorités?

Do you have that amongst your authorities?
No?

M. RANCOURT: J'ai demandé ---

THE COURT: You didn't supply them theirs? No?

MR. DOODY: No.

THE COURT: No. Okay.

M. RANCOURT: J'ai demandé qu'ils ---

LA COUR: Oui, oui.

M. RANCOURT: Alors, je -- cette décision de

Button v. Jones ---

LA COUR: Oui?

M. RANCOURT: --- était un cas où, en mi-motion, un juge on lui a demandé de se récuser pour raison de crainte raisonnable de partialité.

LA COUR: Oui.

M. RANCOURT: Et le juge a refusé d'entendre la motion.

Et donc, cette motion est allée à un autre juge de la même Cour ---

LA COUR: Oui.

M. RANCOURT: --- pour que lui entende la motion et ce juge a refusé d'entendre la motion parce qu'il a résumé la jurisprudence et il a conclu que c'était au juge original de l'entendre.

Et donc, je vous amène au paragraphe 16 de cette décision.

LA COUR: O.k. Lis-le ce qui est là.

M. RANCOURT: Il dit au paragraphe 16: ---

LA COUR: Oui?

M. RANCOURT:

« Although I cannot find the point addressed specifically, in my view, implicit in the reasoning in these cases is the position that once a party has expressed an intention to bring a recusal motion, it should be heard before a judge makes a further decision in the case affecting the rights of the parties ... »

Premièrement, ça devrait être entendu avant qu'on continue. Ça c'est le premier point.

LA COUR: Donc, y devrait pas -- avant que le

juge ou la Cour fait une autre décision, à l'avenir, donc?

M. RANCOURT: Oui.

LA COUR: Bon, o.k.

M. RANCOURT: O.k., et ça c'était le paragraphe 16.

LA COUR: Oui.

M. RANCOURT: Et au paragraphe 26 qui est peut-être plus important ---

LA COUR: Oui?

M. RANCOURT: --- il dit la chose suivante:

"This is not the proper approach. The results in another judge inheriting a case without the benefit of knowing its history, what the case law requires is that the trial judge hear full arguments on the recusal motion and do the best that he can to apply the law to the facts and decide the case on its merits."

Alors, ce juge de la Cour supérieure a étudié la jurisprudence et a conclu que le juge qui est présenté avec une demande de se récuser ou une demande relatif à crainte raisonnable de partialité doit entendre la chose avant de continuer.

Et donc, moi, j'en conclus de ça que ça veut dire que c'est la même Cour -- un juge dans la même cour -- qui doit entendre la motion.

Dans ce cas-ci, on a des circonstances ---

LA COUR: Juste pour comprendre bien, la situation ici pourtant est que le Juge Beaudoin s'est retiré sur le champ. Boom. Gone.

M. RANCOURT: Oui.

LA COUR: Voilà.

Donc, il est pas question que, lui, il pourrait entendre l'affaire. Donc, tout ce que on peut faire c'est en appeler de sa décision; non?

M. RANCOURT: Mais non.

Je pense qu'il était raisonnable de demander à un autre juge de la même cour d'entendre la question, crainte raisonnable de partialité, avant que la motion continue parce que, justement, c'est une situation analogue à celle-ci.

Ici, un juge voulait pas l'entendre -- un peu comme le Juge Beaudoin mais pour des raisons différentes -- un autre juge de la même cour a donc dû regarder la question et il a dit: « Non ».

LA COUR: Mais on a terminé avec le juge problématique selon votre version et on passe à un nouveau juge qui n'est pas problématique.

Donc, ce juge-là, lui, il a plein d'autorité de procéder à regarder parce que, lui, il n'est pas sur une appréhension de partialité.

Donc, une fois que -- une fois que Beaudoin s'est retiré, le Juge Beaudoin s'est retiré de l'affaire, bon, ça passe à Juge Smith. Juge Smith n'est pas -- quel est le mot -- sous cette -- sous cette même -- je cherche les mots en anglais également pour le traduire un peu dans ma tête -- mais il n'est pas sous la même appréhension, si vous voulez. Donc, voilà.

Donc, il dit -- bien, la raison pourquoi il dit il faut faire ça avant de continuer, o.k., mais ce juge s'est retiré. Boom, il est parti. Bye bye.

M. RANCOURT: Il y a un élément -- monsieur le juge, avec tout respect, il y a un élément, là, que je dois ajouter ---

LA COUR: O.k.

M. RANCOURT: --- qui est important.

LA COUR: Mais c'est juste comment je le vois, vous expliquez pas comme -- c'est pas les mêmes faits.

M. RANCOURT: Oui.

Alors, je comprends ce que vous dites, je comprends parfaitement ce que vous dites ---

LA COUR: Oui.

M. RANCOURT: --- et sur ce que vous dites, vous avez raison mais il y a un élément, à mon sens, qui manque qui est très important qui est le suivant: Si les choses se seraient déroulées -- ce s'étaient déroulées normalement ---

LA COUR: Oui?

M. RANCOURT: --- il y aurait eu une détermination pour crainte raisonnable de partialité.

S'il y avait eu une détermination positive à cette question-là, à ce moment-là, il y a des répercussions immédiates et obligatoires.

Et donc, pour ces raisons, étant donné l'importance de la question crainte raisonnable, j'ai le droit à cette détermination quand je la demande en mi-motion pour avoir droit aux

conséquences de cette détermination-là.

LA COUR: Oui, mais vous avez la décision de Beaudoin; o.k.?

Vous dites que c'est pas une décision mais je pense que c'est une décision, donc, il faut obtenir autorisation d'en appeler et, à ce moment, ça passe devant moi, o.k., et, moi, je regarde la situation et, moi, je devrai décider si c'est le genre de situation de cause qui devrait passer à la Cour divisionnaire.

C'est ça? Oui, cour divisionnaire dans ces circonstances ici.

Donc, moi, je suis dans la situation où moi je peux statuer sur le problème en soi moi-même en laissant son passé parce que on n'est pas pour -- pourquoi on a -- c'est fait de cette façon, c'est on veut pas envoyer les choses à la Cour divisionnaire où y vont regarder tout ça et dire: Bien, bon, il y a pas de problème de partialité ici parce que, à moins que c'est -- il y a quelque chose qui est assez clair.

O.k., donc, ça c'est où nous sommes aujourd'hui. On a une décision. Moi, je -- vous devrez me présenter tous les faits je pense que j'ai ici et, moi, je devrai décider: Bon, bien, si je trouve qu'il a -- le Juge Beaudoin n'était pas parfait, donc, est-ce que -- quand même parce que c'est deux étapes -- c'est la deuxième étape et, moi, j'ai le droit de regarder les choses et, moi, je devrai décider il y a quelque chose ici ou non.

M. RANCOURT: Je comprends ---

LA COUR: Comprenez-vous?

M. RANCOURT: Je comprends ce que vous dites ---

LA COUR: Voilà.

M. RANCOURT: --- monsieur le juge, mais ---

LA COUR: O.k.

M. RANCOURT: --- j'aimerais présenter -- encore, je vais essayer de -- d'expliquer plus clairement mon point.

Je crois que il y a deux branches dans cette motion: une branche est celle que vous venez de décrire où je demande d'aller en appel.

LA COUR: Oui.

M. RANCOURT: L'autre branche c'est que j'avais le droit et j'ai encore le droit, à mon sens, d'avoir une détermination judiciaire par la même Cour de cette question ---

LA COUR: Oui.

M. RANCOURT: --- de crainte raisonnable.

LA COUR: Et moi je trouve que la cause que vous citez n'est pas pour cette raison.

Ça c'est lorsque le juge restait capable, il disait: Moi, je fiche le camp. Je vais laisser ça à un autre juge. Le juge qui l'a pris dit: Non, non, vous devez retourner là pour le faire là.

O.k.?

M. RANCOURT: Je ---

LA COUR: Ce juge-là, il est -- il est dans une impossibilité parce que, lui-même, il dit -- par le fait et par les circonstances qui se sont passées devant lui, o.k., il n'était plus capable de rendre cette décision et il dit: J'ai décidé

-- je trouve que j'étais pas en conflit d'intérêt mais je peux pas aller plus loin.

Et votre argumentation c'est, bon, peut-être il a pas fait la bonne procédure, bla bla bla.

Bon, bien -- et je saisis un peu tout cela, c'est pas exactement comme vous avez argué ça et eux ils ont un point, là, qui disent, bien, je devrais me limiter à cette question de -- pas procédurale mais le contenu de ...

Mais en même temps, moi, j'ai une -- moi, je devrais être satisfait que l'argument -- le fond de l'argument vaut une peine de passer au -- à la Cour divisionnaire parce qu'on n'est pas pour gaspiller notre temps si, moi, je trouve que la Cour divisionnaire va imposer un -- la même décision; o.k.?

M. RANCOURT: Oui.

LA COUR: Voilà. Donc, c'est -- vous êtes juste ---

M. RANCOURT: Mais ---

LA COUR: --- vous êtes juste à demi-chemin ---

M. RANCOURT: J'admets que si la demande d'aller en appel était avec succès, l'autre demande deviendrait 'moot'. J'admets ça.

Mais si la demande d'aller en appel n'a pas de succès ---

LA COUR: Vous parlez de question de Smith?

M. RANCOURT: Oui.

LA COUR: Oui, Smith ---

M. RANCOURT: Non, non, non, non, non, non.

LA COUR: Non?

M. RANCOURT: Non, non, non. Attendons. Je

parle de la même motion, la motion originale avait deux branches.

LA COUR: Oui, oui, mais deuxième branche, donc, de Smith.

M. RANCOURT: Oui.

LA COUR: Oui.

M. RANCOURT: La deuxième branche de Smith, j'aurais droit à cette deuxième branche si je n'ai pas le droit d'aller en appel, à mon sens. C'est ce que je dis.

LA COUR: La logique du droit n'est -- ne vous suit pas parce que c'est une -- c'est une -- c'est pas fait comme ça qu'on a les chemins qui branchent philosophiquement.

Nous, on regarde plus ou moins qu'est-ce qu'il se passe et on regarde pratiquement quel sera le résultat final et c'est un peu comment on devrait le trancher parce qu'on a -- il y a tellement des moyens de se trébucher.

Mais, de toute manière, faites votre -- continuez. Je comprends bien votre argumentation; o.k.? Je vous signale que je regarde pas la cause *Button* ou *Button* de la même façon.

M. RANCOURT: Mais c'était une cause où il y avait deux juges de la même Cour mais c'est pas la cause principale par rapport à ce point-ci.

LA COUR: Oui.

M. RANCOURT: La cause principale est une cause de la Cour Suprême de l'Ontario ---

LA COUR: Oui.

M. RANCOURT: --- et c'est -- Monsieur Doody a

cette -- ça dans ses matériaux.

LA COUR: Très bien.

M. RANCOURT: Moi, je l'ai dans mon affaire et Monsieur Dearden ne l'a pas parce qu'il ne l'a pas amené aujourd'hui mais c'est l'onglet 9 de mon livre -- de mon livre des autorités.

LA COUR: Oui. Oui, oui, on a passé ça. Mais quelle est la cause?

M. RANCOURT: Et donc, la cause est *Wewaykum Indian Band v. Canada* (2003).

LA COUR: Ah, dans la Cour Suprême même?

M. RANCOURT: Oui.

LA COUR: O.k.

O.k., allez-y.

M. RANCOURT: O.k.?

Alors, les points que j'aimerais soulever dans cette cause de la Cour Suprême sont les suivants et ça -- vous allez voir que ça touche à la question qu'on est en train de traiter.

LA COUR: Oui.

M. RANCOURT: Alors, premièrement, dans le paragraphe 2, à la page 9:

"An allegation that a judgment may be tainted by bias or by reasonable apprehension of bias is most serious. That allegation calls into question the impartiality of the Court and its members and raises doubt on the public's perception of the Court's ability to render justice according to law.

Consequently, the submissions in support of the Applicant Bands and the other parties have been examined in detail as reflected in

the following reasons."

Donc, très sérieux. Ça amène -- ça amène en cause tout le système judiciaire.

Ensuite, je passe au paragraphe 67 ---

LA COUR: O.k.

M. RANCOURT: --- de ma page 36 de cette décision et le paragraphe 67, en partie ---

LA COUR: Et vous citez la cause de la Cour Suprême, c'est ça, 2003?

M. RANCOURT: Oui.

LA COUR: Ça c'est le volume?

M. RANCOURT: Oui.

LA COUR: O.k.

M. RANCOURT: C'est donc *Wewaykum Indian Band v. Canada* (2003).

LA COUR: Oui, oui, mais il y a tellement de volumes. Une cause comme ça est publiée -- je veux juste être certain qu'on est sur la même page.

Mais, de toute manière, o.k., allez-y.

M. RANCOURT: Donc, je crois que la référence précise c'est: 2003 SCC 45.

LA COUR: « 2SCR ».

M. RANCOURT: Oui, 2SCR ---

LA COUR: Voilà.

M. RANCOURT: --- 259.

LA COUR: O.k., allez-y donc.

M. RANCOURT: O.k., donc, je suis toujours dans cette cause et je veux lire trois paragraphes dans cette cause.

LA COUR: O.k., page -- paragraphe 67.

M. RANCOURT: Oui, je suis au paragraphe 67.

LA COUR: Oui.

M. RANCOURT: Donc, je vais m'asseoir pour que ça soit plus facile ---

LA COUR: Oui, oui.

M. RANCOURT: --- pour la lecture.

"Of the three justifications for the objective standard of reasonable apprehension of bias, the last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done - that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her [qualification]."

Et un peu plus bas, dans le paragraphe 68:

"We emphasize this aspect of the [criterion] ..."

"... another strand of this area of the law of the Commonwealth suggests that some circumstances of conflict of interest may be enough to justify disqualification, whether or not, from the perspective of the reasonable person, they could have any impact on the judge's mind."

et cetera.

Donc, on parle de cette -- de cette circonstance-là.

LA COUR: Oui, mais ça c'est -- on entend juste ce genre de chose depuis longtemps là.

M. RANCOURT: Oui.

LA COUR: Mais c'est -- on est d'accord avec ça mais ça porte pas nécessairement sur le point ici.

M. RANCOURT: Ah, j'admets que c'était plutôt ...

(COURTE PAUSE/SHORT PAUSE)

LA COUR: Écoutez, on n'a pas assez de temps pour faire ça.

M. RANCOURT: M'hm.

LA COUR: Par après, si vous voulez, vous pourrez me faire expédier une liste des causes et les pages à lire; o.k.?

Donc, si il y a des autres causes qui vous intéressent, tout ce que je demande de vous c'est le nom de la cause ---

M. RANCOURT: Oui.

LA COUR: --- le nom de cause et les paragraphes à lire.

M. RANCOURT: Et une note en quoi c'est pertinent?

LA COUR: Oui, si vous voulez.

M. RANCOURT: O.k.

LA COUR: Mais pas plus que -- pas plus que deux lignes.

M. RANCOURT: D'accord.

LA COUR: O.k.?

M. RANCOURT: D'accord.

LA COUR: C'est juste la cause et la page et, moi, je serai en mesure de mettre tout ça ensemble, croyez-moi.

Yes, sir? I know.

MR. DEARDEN: Your Honour, can you please confirm with this Defendant that you've just asked him

for a list of other cases for you to look at and that he isn't supposed to be giving ---

THE COURT: That he's supposed to ---

MR. DEARDEN: --- any other information.

THE COURT: That he's supposed to be -- yes, that's all he's going to give me. He understands that.

And it should be related to this issue right here.

M. RANCOURT: Oui.

MR. DEARDEN: And it's solely related to this issue.

THE COURT: Yes.

MR. DEARDEN: So this is not going to be longer than a page.

THE COURT: That's right, no submissions. I said no longer than two lines that sort of say what it is. O.k.? What he wants me to look at and what it's for.

M. RANCOURT: Alors, ce ---

MR. DEARDEN: I would ask the Court ---

M. RANCOURT: Ce ---

MR. DEARDEN: --- to please lock him down on the two lines because ---

THE COURT: I just said two lines. Hein, deux lignes?

MR. DEARDEN: Yeah, so -- so have previous Justices, Your Honour, and he doesn't listen.

M. RANCOURT: Ça c'est faux. Ça c'est faux.

LA COUR: Il va -- de toute manière, moi, je vais m'arrêter -- la chose qui m'intéresse c'est les pages, o.k., de la cause et je vais lire --

tenter de faire la synthèse pour vous où ça -- où ça va, où ça va pas dans votre argumentation. C'est ça que je vais faire.

M. RANCOURT: Monsieur le juge, juste pour résumer ---

LA COUR: Oui?

M. RANCOURT: --- les points -- parce que il y a ce problème des autorités ---

LA COUR: Et il y a le problème du temps ---

M. RANCOURT: --- que vous ne les avez pas ---

LA COUR: Oui.

M. RANCOURT: --- et le problème de temps ---

LA COUR: Vous allez voler un autre 15 minutes de vos ---

M. RANCOURT: --- quand il y a des questions où on n'a pas le temps d'aller à l'autorité, je vais le signaler dans ce -- dans ce document ---

LA COUR: C'est ça.

M. RANCOURT: --- que je vais vous donner.

LA COUR: C'est ça. C'est ça.

M. RANCOURT: Si ---

LA COUR: C'est pas un factum, c'est juste les causes et les pages.

M. RANCOURT: Oui, et ça peut-être être plus qu'une page parce que je vais ---

LA COUR: Oui, oui, oui.

M. RANCOURT: --- utiliser ---

LA COUR: Oui, oui.

M. RANCOURT: D'accord.

LA COUR: Vous signalez où je devrais lire dans la cause et je vais le lire; o.k.?

M. RANCOURT: Merci.

LA COUR: O.k.

M. RANCOURT: O.k.

LA COUR: Mais est-ce que on peut passer au troisième, la chose de septembre, le 6 septembre, parce que je vais vous donner jusque -- jusqu'au -- trois heures -- deux heures et demie; O.k.?

On empiète sur le temps de nos -- des parties de la Défenderesse parce que je sais qu'ils sont vites là.

M. RANCOURT: Oui. Ils sont très efficaces. J'ai cru -- j'ai su le remarquer dans le passé.

Monsieur le juge, je -- oui, on peut faire ça et ---

LA COUR: Oui, et j'ai tout lu.

M. RANCOURT: --- on va faire ça ---

LA COUR: J'ai tout lu; o.k.?

M. RANCOURT: Oui, o.k., je comprends ça.

LA COUR: Oui, oui, j'ai tout lu.

M. RANCOURT: Juste signaler qu'il y aura un autre point.

Les 'compendium' que Monsieur Dearden a fournis ---

LA COUR: Oui?

M. RANCOURT: --- je vais avoir des objections de certains des éléments qui sont là-dedans.

LA COUR: En autant qu'ils sont déjà dans la documentation devant moi ---

M. RANCOURT: À mon sens, ils ne le sont pas ---

LA COUR: Bon, vous allez signaler ça à lui peut-être lors du 'break'; o.k.?

M. RANCOURT: Pour qu'il soit d'accord de les enlever, vous voulez dire?

LA COUR: Bien, s'ils sont pas déjà dans la documentation, il devrait pas ajouter à même le 'compendium'.

M. RANCOURT: D'accord.

LA COUR: Ça c'est compris. Il m'a dit que c'est tout dans la documentation déjà ici.

M. RANCOURT: Et je crois qu'il est peut-être en erreur.

LA COUR: O.k. On verra. Peut-être vous pourrez faire -- parlez-vous après.

M. RANCOURT: D'accord.

LA COUR: Donc, septembre, le 6 septembre, s'il vous plaît, là.

M. RANCOURT: O.k., donc, je sors ---

LA COUR: Et j'ai votre factum.

M. RANCOURT: Oui, mais moi je l'ai pas encore. Excusez-moi.

LA COUR: Oui.

M. RANCOURT: On va vite.

LA COUR: Oui.

M. RANCOURT: Bon. Donc, on est rendus au 6 septembre, je dois trouver le bon dossier.

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: Donc, je pense que j'ai tous les matériaux pour le 6 septembre, incluant même le factum de Monsieur ---

LA COUR: Si je pourrais vous aider un peu là; o.k.?

Il faut que vous m'indiquez quoi -- une question qui n'est pas bien répondue -- n'a pas été bien répondue et essentielle -- essentielle, c'est absolument sans laquelle vous ne pouvez pas

aller de l'avant.

M. RANCOURT: Mais j'ai pas ---

LA COUR: Parce que le test était assez haut pour les 'refusals'. O.k., on a des 'refusals' tout le temps là.

Et donc, c'est pas juste: Bon, bien, le juge a fait une erreur ici, il faut être capable de dire que ça vaut la peine de renvoyer ça à un juge de la Cour divisionnaire.

M. RANCOURT: Oui.

LA COUR: Parce que on a des moyens de récapturer les choses dans le procès. On pourrait toujours reposer les questions un peu. On peut toujours jouer contre -- le fait que le monde refuse des questions, c'est pas la fin du monde parce qu'on a des autres moyens de même utiliser ça à notre avantage dans un procès.

Donc, c'est pas quelque chose de -- ou vous ne trouverez pas beaucoup de causes où on aura des refus qui -- sur lesquels on donne permission de faire.

Donc, ça c'est pourquoi que je dis que vous devrez signaler: Ah, ça, ça m'a blessé. Je ne pouvais pas aller de l'avant là.

M. RANCOURT: Oui.

LA COUR: O.k.?

M. RANCOURT: Oui, je comprends.

LA COUR: O.k.

M. RANCOURT: Par contre, j'aimerais signaler quelque chose: La situation actuelle est différente d'un procès comme vous ---

LA COUR: Oui, je comprends bien là.

M. RANCOURT: --- parce que c'est une motion de champartie qui pourrait mettre fin à l'action.

Donc, ce n'est pas des questions qui vont être retraitées dans l'action principale.

LA COUR: C'est le test qui est pour -- pour interjeter appel pour une décision interlocutoire; o.k.?

C'est très haut.

M. RANCOURT: Oui. D'accord.

LA COUR: Ça c'est pourquoi on est permis de faire des erreurs et même sans avoir permission.

Ça c'est ce que les deux tests disent.

M. RANCOURT: Oui. Je comprends.

Donc, je vais me référer à mon factum pour cette motion ---

LA COUR: Voilà.

M. RANCOURT: --- qui est la motion de la décision ---

LA COUR: Oui.

M. RANCOURT: --- du 6 septembre.

Donc, je vais aller à la section à la page 7 de ce factum.

LA COUR: Oui, je suis là.

M. RANCOURT: Et la section est intitulée:

"Grounds for Leave to Appeal:

1. Justice Smith misdirected himself about the evidence."

Alors, premièrement, je veux signaler que, essentiellement, presque tous -- et je pense si c'est pas tous les points des évidences de 'background', le Juge Smith d'après moi s'est médirigé. Il a dit des choses qui montrent que

il ne -- il n'appréciait pas bien le
'background'.

Et je vais commencer avec la question la plus
importante ---

LA COUR: Voilà, allez au point qui, pour vous,
est le plus important qui vous a blessé ---

M. RANCOURT: Oui.

LA COUR: --- le plus possible.

M. RANCOURT: D'accord.

LA COUR: O.k.?

M. RANCOURT: Alors, pour la question de
'misdirected himself on the evidence' ---

LA COUR: oui?

M. RANCOURT: --- qui est -- j'ai une
jurisprudence qui montre que ça c'est une erreur
de droit.

LA COUR: Oui.

M. RANCOURT: J'ai une jurisprudence qui établit
ça, je peux en parler un peu plus ---

LA COUR: Non, non, on sait ---

M. RANCOURT: D'accord.

LA COUR: --- c'est connu là.

M. RANCOURT: Et donc, c'est le paragraphe 20, à
la page 7.

Essentiellement, le Juge Smith a dit:

« Allan Rock has already answered this
question in detail ... »

et il a dit dans sa décision:

« Allan Rock has already been questioned on
this issue ... »

et je dis c'est strictement impossible parce que
la lettre en question -- le courriel en question

sur lequel je posais des questions est venu -- a été divulgué par la Plaignante après mon 'examination' de Allan Rock.

Alors, ça aurait été impossible que je pose des questions à Allan Rock à propos de ce courriel qu'il aurait envoyé ---

LA COUR: O.k.

M. RANCOURT: --- si je n'ai eu ce courriel pour -- et que j'ai eu connaissance de ce courriel.

Je ne savais rien à propos de ce courriel ---

LA COUR: Donc, quelle est l'importance du fait qu'on n'avait pas ---

M. RANCOURT: Oui, l'importance c'est la suivante ---

LA COUR: Oui.

M. RANCOURT: --- monsieur le juge, et c'est que ce courriel est un courriel -- et, évidemment, mes opposants vont dire le contraire mais, en fait, le Juge Smith est d'accord avec moi dans sa décision -- c'est un courriel qui a été envoyé de Allan Rock à l'avocat de la Plaignante et récemment, le 30 mars 2012.

Et ce courriel, si on regarde la structure de ce courriel, il est -- Allan Rock était en train d'envoyer des matériaux à l'avocat qu'il a ensuite divulgués en -- qu'il a ensuite divulgué ces informations-là dans des documents.

Donc, ça -- ça, ça établit que il y a eu une communication entre le Président de l'Université d'Ottawa et l'avocat de la Plaignante sans que la Plaignante soit en 'cc' ---

LA COUR: Sans? J'ai pas ---

M. RANCOURT: Sans que la Plaignante ---

LA COUR: Soit en 'cc'?

M. RANCOURT: --- partie de cette communication

LA COUR: Ah, en copie conforme, à ce moment-là.

M. RANCOURT: Oui.

LA COUR: O.k.

M. RANCOURT: Et donc, ça voudrait dire -- et ça, c'est exactement pertinent à la question de champartie parce que Allan Rock a dit sous serment qu'il a eu -- qu'il ne dirige pas du tout -- qu'il a aucune communication par rapport à ce -- à ce litige.

LA COUR: Donc, vous ---

M. RANCOURT: Donc, ---

LA COUR: Selon vous, le fait de fournir de la documentation exigée sans doute par les avocats indique que il dirige?

M. RANCOURT: Indique qu'il y a des communications entre le Président -- alors qu'il dit qu'il n'y en a aucune -- entre le Président et la Plaignante.

LA COUR: Bien ---

M. RANCOURT: Mais là.

LA COUR: Mais le fait est, me semble, que si c'est juste pour transmettre la documentation, bien, on a besoin de documentation, il faut le trouver -- c'est où ça se trouve, il faut poser des questions. On dit: Bien, fais venir la documentation. Voilà, c'est ici là.

M. RANCOURT: Um ---

LA COUR: Vous avez la lettre quand même?

5
M. RANCOURT: Oui. On va regarder ça dans un instant mais le point est le suivant, monsieur le juge: J'utilisais ça dans une motion de refus pour signaler qu'il devait avoir d'autres tels documents.

Et ma question à la Plaignante était:
Puisqu'il y a ces documents, j'aimerais que vous ordonniez à votre avocat de me fournir tous les documents ---

10
LA COUR: Oui, oui.

M. RANCOURT: --- qu'il a échangés avec le Président.

LA COUR: Bien, o.k., j'ai bien saisi votre ...

15
Qu'est-ce que c'est votre deuxième meilleur point sur ce point-là?

M. RANCOURT: O.k.

LA COUR: Et je travaille comme il faut pour reconnaître qu'est-ce que c'est le test ici; o.k.?

20
Je vous ai déjà signalé que c'est -- j'ai déjà -- je vous ai déjà signalé que c'est -- c'est difficile d'ordonner une permission d'appel sur des refus.

M. RANCOURT: Oui.

25
LA COUR: C'est pas quelque chose qui se fait normalement.

M. RANCOURT: J'apprécie.

LA COUR: O.k.

30
Ça c'est pourquoi je dis: Mais donnez-moi vos meilleurs.

M. RANCOURT: Oui.

LA COUR: O.k.?

M. RANCOURT: Oui.

Alors, ça c'était -- ça c'était une question qui, dans le contexte d'une motion de refus, ouvrait la porte à tous les documents que je n'ai pas vus qui montrent le lien entre l'Université d'Ottawa qui finance l'action privée et la Plaignante.

Et c'était donc un -- un central parce que ça établissait qu'il y avait une telle communication et que, donc, il pouvait en avoir d'autres parce que les deux côtés n'iaient qu'il y avait aucune communication; et même, on nie jusqu'à la dernière minute ---

LA COUR: O.k.

M. RANCOURT: --- et le Juge Smith vient de dire dans sa décision qu'effectivement c'est une communication qu'il y a eue; o.k.?

LA COUR: Oui.

M. RANCOURT: Donc, voilà, ça c'était la première -- le premier point.

Alors, je vais essayer d'aller au plus important, comme vous dites.

LA COUR: Oui.

M. RANCOURT: C'est pour ça que ça me prend deux secondes de plus parce que je -- il y en a que je mentionnerai pas.

LA COUR: J'ai bien compris votre -- all the *audi alteram partem* chose là, donc, ça c'est ---

M. RANCOURT: M'hm.

LA COUR: --- donc pas nécessaire de toucher à cela.

M. RANCOURT: Je ---

LA COUR: 'Misdirected on background facts', je lis, bon bien ---

M. RANCOURT: Moi, ce qu'y m'a surpris, monsieur le juge, c'est que il y a -- il y a des -- c'est -- les 'background facts' sont complètement pas compris sur toute la ligne et c'est pour ça que peut-être que chacun individuellement c'est pas grand-chose mais quand on regarde l'ensemble, on voit que chaque énoncé de 'background fact' a une erreur, a un problème avec elle et c'est pour ça que je les ai énumérés dans mon factum entre les paragraphes 20 jusqu'à 26.

Parce que c'est -- je comprends que un ici, une erreur là, une erreur là, c'est correct mais quand chaque énoncé -- essentiellement, chaque énoncé -- donc, les paragraphes de la décision c'est les paragraphes 32, 34 ---

LA COUR: Mais si je regarde 22, par exemple:

"... Justice Smith found that Rancourt also raised the fact that Beaudoin's deceased son previously worked at the law firm and the finding of this is a central point raised by the Defendant which is the said law firm BLG named a meeting room ..."

et je suis certain que le Juge Smith a bien saisi ça. Mais il (inaudible) quelque chose, il saisit un point où plus ou moins il y a implication entre les deux et, donc, quelle est la différence entre le fait il travaillerait et d'avoir une salle mais ça c'est une question -- c'est pas la fin du monde, disons.

M. RANCOURT: Mon seul -- c'était -- c'était pas

même très pertinent qu'il ait travaillé là, le point c'était la salle. C'est ça qui est le point.

Et donc, il a choisi la chose qui était -- il a retenu la chose qui était pas pertinente et il a pas retenu la chose qui était pertinente.

LA COUR: Ah, je pense que ---

M. RANCOURT: D'accord.

LA COUR: --- il saisit un peu l'idée. C'est il saisit un peu l'idée que, voilà, on a une -- un rapport proche avec, tu sais, l'Université et le -- l'étude vu que ils ont -- c'est une situation il travaille là, décédé, bla bla bla, et ça va tout ensemble.

M. RANCOURT: Je suis d'accord c'est pas un peu -- je mettrais de l'emphase sur 'un peu' -- c'est un peu lié.

LA COUR: Oui, mais je comprends vous voulez qu'on mette plus d'emphase sur ça mais est-ce que ça va changer le -- la décision? Je pense que non.

M. RANCOURT: Je ne sais pas, mon seul point est que essentiellement tous les énoncés de background ---

LA COUR: Oui?

M. RANCOURT: --- sont défectueux.

Ensuite, '*audi alteram partem*' ---

LA COUR: Je pense que j'ai compris ça.

Vous dites que l'issue en regard à ça ça indique que les -- que lui-même il avait un certain genre de partialité contre -- contre votre cause ---

M. RANCOURT: Non.

LA COUR: Non?

M. RANCOURT: Non, c'est pas ça, monsieur le juge.

LA COUR: 'Did not read ... » ah, excusez-moi, il n'a pas tout à fait lu toutes les choses.

Excusez-moi, il a pas tout -- il a pas saisi ce que vous avez dit là, donc, c'est ---

M. RANCOURT: Ah, c'est ---

LA COUR: --- pas vous entendu.

M. RANCOURT: C'est pire que ça, monsieur le juge.

J'aimerais vous donner mon exemple plus frappant; d'accord?

LA COUR: Oui, allez-y.

M. RANCOURT: Alors, mon exemple -- un des exemples les plus frappants dans cette section c'est le paragraphe 28 ---

LA COUR: Oui.

M. RANCOURT: --- où le Juge Smith a carrément fait des décisions sur cinq questions de refus qui n'étaient pas devant lui. Qui n'étaient pas devant lui.

LA COUR: Mais ça c'est des choses que -- mais c'est ça, y sont les mêmes références que j'ai vues dans vos 'facts', dans vos faits là.

M. RANCOURT: Non, non.

Alors, vous pouvez regarder -- si vous êtes au paragraphe 28 ---

LA COUR: Oui.

M. RANCOURT: --- je cite les raisons de la décision où il prend ces décisions-là. Je cite

mes soumissions écrites où je dis que ces questions-là ne sont -- ne sont pas des questions de refus mais que je présente les réponses à ces questions-là pour donner un 'background' uniquement.

LA COUR: Mais comment est-ce que ça peut affecter le résultat?

M. RANCOURT: Non, ça ---

LA COUR: Y pense -- y pensait que vous voulez des réponses sur des questions, si je comprends bien, que vous (inaudible). C'est pas des questions que dont je demande des décisions, quelque chose comme ça.

Mais, écoute, lorsqu'on a tout ça devant vous, la question c'est: Quel est l'impact?

Bon, bien, vous avez quelque chose. Il dit: Bien c'est pas -- c'est pas vraiment une décision pour vous, il dit -- il donne une décision.

Bon, bien, parfait, mais quel est l'impact sur la décision finale?

M. RANCOURT: Je suis pas un avocat, comme vous savez, monsieur le juge, ---

LA COUR: Oui.

M. RANCOURT: --- mais il me semble que quand un juge prend une décision formelle, écrite, de quelque chose qu'on lui a jamais demandé et qu'il était explicitement dit dans mes -- dans mes documents que ce n'était pas des questions que je demandais, ça indique que il y a pas ---

LA COUR: Mais ça c'est pas -- qu'un juge dirait pourquoi, est-ce que ça -- on a quelque chose devant moi sur lequel on va prendre -- on va

prendre une décision?

Si c'est pas pertinent, ne mettez pas ça devant moi. Ça c'est comme nous travaillons normalement.

Et un avocat ne mettra pas quelque chose qui n'est pas pertinent devant le juge et c'est ça qui est la confusion.

Donc, il faut -- c'est une question de communication et tout ça mais je dis -- la question de base c'est: Quel effet? Quel effet qu'il ait répondu aux questions qui n'étaient pas pertinentes?

Ça démontre absolument rien; o.k.?

M. RANCOURT: Et, à mon sens ---

LA COUR: Sauf un manque de communication.

M. RANCOURT: Oui, un manque de communication ---

MR. DEARDEN: Well, Your Honour, there was no lack of communication.

THE COURT: No, again, but you'll come to that ---

MR. DEARDEN: I'll address it -- I'll be addressing ---

THE COURT: Address it, okay.

But I'm responding in the sense, like: So what? All right? That's where I am to a large degree.

MR. DEARDEN: There was actually no "so what?" and you'll hear that ---

THE COURT: All right, well, there was more than that ---

MR. DEARDEN: --- in my argument.

LA COUR: All right.

M. RANCOURT: O.k.

MR. DEARDEN: And his time is up.

THE COURT: Yeah. His time is up. So ---

M. RANCOURT: Monsieur le juge, je n'ai pas fait la question centrale qui sont les erreurs de droit. Les erreurs de droit dans cette -- dans cette décision par rapport aux décisions qu'il a prises.

Je n'ai parlé que les deux premiers éléments mais le -- la chose principale ici ---

LA COUR: Et vous savez, c'est très bien fait. Moi, j'ai lu tout cela.

M. RANCOURT: Oui.

LA COUR: O.k.? Et moi j'ai lu tout cela et je comprends bien quelles sont vos argumentations sur les erreurs de droit.

O.k., vous dites, par exemple, que il a bien compris la loi d'une certaine façon mais il n'a pas bien appliqué la loi.

M. RANCOURT: Oui.

LA COUR: Aux faits.

C'est assez compliqué pour nous, je vous dis là; o.k.?

De toute manière, normalement, on cherche où il a pas compris le droit et ça c'est beaucoup plus facile pour nous. Mais l'application du droit aux faits, ça c'est -- ça c'est dans -- où le pouvoir discrétionnaire d'un juge reste et c'est pour nous de contourner l'application du droit aux faits, c'est très compliqué.

Donc, ça prend une erreur 'palpable' et je sais pas comment on dit là mais 'overriding'.

Donc, c'est ---

M. RANCOURT: Monsieur le juge, je n'ai pas de façon de juger si le Juge Smith a compris le droit ou pas parce qu'il a simplement cité des paragraphes de quelques décisions centrales. Donc, je ne peux pas savoir -- mais sa -- le fait qu'il les a utilisés comme il l'a utilisé suggère qu'il n'a pas compris aussi; je pense.

Mais -- parce que, en champartie, le droit est très clair et je voulais -- je voulais signaler les autorités là-dessus en champartie ---

LA COUR: Mais ils sont tous dans votre factum.

C'est ça -- ça c'est bien avec vous, pas comme les autres parties qui sont souvent pas représentées, vous avez une très bonne compréhension de tout et vous faites de bons argumentations.

Je vous félicite, à vrai dire ---

M. RANCOURT: Merci.

LA COUR: --- pour votre performance.

M. RANCOURT: Merci.

LA COUR: Et c'est grâce à ça que, moi, j'ai une certaine confiance que j'ai saisi un peu ce que vous dites et, sur ce plan-là, l'application -- pas l'application mais les points de droit et l'impact dans ce genre de chose, je pense que je suis en mesure de décider ça.

Comme j'ai dit, pour moi, la question c'est: Est-ce que -- même s'il y a des erreurs, est-ce que, moi, je peux dire ça vaut la peine de mettre ça devant une Cour divisionnaire et je dis

simplement que le -- le seuil est très -- très haut; si ça c'est le mot là.

M. RANCOURT: Mais justement, monsieur le juge, ça vaut absolument la peine parce que si on regarde les erreurs de droit ici ---

LA COUR: Oui?

M. RANCOURT: --- ce sont tous -- ça donne toute lieu à nier ma demande pour des documents et des réponses à des questions.

 Systématiquement, chacune de ces erreurs de droit nient que j'ai accès à l'évidence pour faire mon cas dans la motion ---

LA COUR: Moi, je vais -- moi, je vais entendre votre -- vos -- les parties adversaires de répondre. C'est leur temps.

 Moi, j'ai juste assez de temps pour mettre -- de donner à les deux parties. Comme j'ai dit, j'ai déjà vos -- bien écrits et bien décrits vos points et si, par hasard -- si par hasard je trouve que j'ai besoin des autres renseignements, je pourrai revenir sur vous.

 Mais de toute manière -- et en réplique, vous aurez peut-être une chance de prendre quelques-unes de ces choses; o.k.?

 Mais, pour le moment, je passe à la partie défenderesse.

M. RANCOURT: Mais si je comprends bien, on va prendre un 'break' pour que Monsieur Dearden et moi puissent résoudre cette question des nouveaux matériaux dans ces documents?

LA COUR: Je pense qu'on commence avec Maître Doody, si je comprends bien dans l'ordre.

Donc, vous aurez l'occasion dans une autre --
a quarter to -- où est-ce qu'on va prendre la
pause?

How long are you going to be, Mr. Doody; do
you think?

MR. DOODY: Your Honour, I -- I intend to deal
with -- with the June 20th/August 2nd decision

THE COURT: Yes.

MR. DOODY: --- and then, very very briefly, with
the July 31st decision of Justice Smith.

I will be certainly less than an hour.

THE COURT: Just see if you can run it along as
much as you can.

MR. DOODY: I certainly will.

THE COURT: I've read your factums and I -- and I
have a good idea of where you're coming from, if
that helps you.

MR. DOODY: Your Honour, and I don't intend to
take you ---

THE COURT: Okay.

MR. DOODY: --- in detail through any of the
documents; maybe one or two, here and there.

THE COURT: All right.

So if you will start then?

MR. DOODY: Okay.

M. RANCOURT: Est-ce que je pourrais juste
prendre quelques secondes pour me mettre devant
moi les documents de Monsieur Doody?

Quels documents est-ce qu'il va utiliser?

THE COURT: He's going to -- il va nous dire.

MR. DOODY: If Mr. Rancourt could have a seat,

Your Honour, I will tell him what documents he needs ---

THE COURT: Exactly.

M. RANCOURT: O.k.

MR. DOODY: --- when I tell you what documents you need.

THE COURT: Because he has to tell me. Il faut qu'il me le dise en même temps.

M. RANCOURT: D'accord.

LA COUR: Donc, moi, je -- il faut que je fouille et tout le monde devrait fournir dans une cause.

Tout ceci affecte quelques heures, ici, je pense.

MR. DOODY: Your Honour, if I could ask you to turn up my Factum which is green? It's called "Factum of the University of Ottawa".

THE COURT: The camouflage is unfair. You're all using the same green.

MR. DOODY: I know.

THE COURT: But I do have it here.

MR. DOODY: It should be a special colour for intervenors.

THE COURT: There should something like that, yes.

MR. DOODY: Then, there's the "Brief of Authorities of the University of Ottawa" which is nine tabs.

THE COURT: Got it.

MR. DOODY: And I may -- I probably won't -- but I may be taking you to the "Responding Motion Record of the University of Ottawa".

THE COURT: I have that in front of me too.

MR. DOODY: And I may be taking you to Mr. Rancourt's Motion Record in respect of the ---

THE COURT: Motion Record or Factum?

MR. DOODY: Motion Record.

THE COURT: All right.

MR. DOODY: Maybe it's Factum but I don't think so.

THE COURT: All righty.

And that's the two-volume one?

MR. DOODY: That's the two-volume one.

THE COURT: Yes, I have it. Thank you.

M. RANCOURT: Donc, là, on est dans la première motion, hein, si je peux ---

LA COUR: Oui.

M. RANCOURT: Dans la première motion de ce matin?

LA COUR: Oui.

M. RANCOURT: Merci.

THE COURT: Please.

MR. DOODY: Thank you, Your Honour.

Your Honour, in my submission, this is -- this -- these motions -- this motion seeking leave to appeal from the decision of Justice Beaudoin of the 20th of June and the decision -- so-called decision of Justice Smith, 31st of July, are part of a pattern of behaviour by this Defendant to avoid the Court reaching a determination on the merits.

It started with the Motion to stay or dismiss the action on the basis of champerty; a motion which we will submit at the appropriate time has absolutely no basis in law -- which I note was

Justice Beaudoin's initial conclusion -- and it then has degenerated into a series of interlocutory motions within the motion to the extent that we are now having a motion within an interlocutory motion within an interlocutory motion.

And if my -- and if Mr. Rancourt is successful, there will then be an appeal to the Divisional Court on an interlocutory motion within an interlocutory motion.

This is civil procedure gone mad, in my respectful submission.

And if I may just very briefly explain what happened on June the 20th as the basis for explaining why this -- the attack on the 24th of July was ill-founded and this motion is ill-founded.

In his Notice of Motion Mr. Rancourt filed seeking to dismiss the action on the basis of champerty -- and I won't take you to it but it's at Tab 2(b) of Mr. Rancourt's Motion Record -- Mr. Rancourt claimed that the funding by the University of Ottawa of this litigation was champertous simply because it was funded by the University of Ottawa.

Then, he supplemented that with an affidavit which he filed in support of that motion in which he said he had been fired by the University some years before; that dispute as to whether or not he was fired appropriately was in arbitration; the University was using the fact of the defamation litigation as evidence against Mr.

5 Rancourt in the labour arbitration and that's why they were funding the lawsuit. It was so they could then use the fact of the defamation litigation as evidence against Mr. Rancourt in the labour arbitration.

10 And, in addition, he said that the University -- it was champertous because the University was receiving a share in the proceeds of the action because the Statement of Claim indicates that the Plaintiff intends to take half of any punitive damage award and pay it into a scholarship fund established at the Law School.

15 Those were the allegations on the champerty motion. It was champertous, he said, because the University was funding it, was using the fact of the defamation litigation as -- to support his position in the arbitration and it was getting a share of the proceeds.

20 The University answered those allegations. Mr. Allan Rock, the President of the University, swore that the only reason to fund the litigation was to support a professor at the University who was defamed as a result of actions she took in the course of her duties.

25 And that was made clear -- it's in my Factum, it was made clear in a letter from my partner, David Scott, acting as counsel for the University, writing -- who wrote Mr. Rancourt and said the University is funding this because it felt an obligation to act in support of one of its professors who was viciously defamed in a racist manner as a result of something she did

30

for the University and that evidence was also found in Mr. Rock's affidavit and on his cross-examination.

Mr. Rock also swore that he knew nothing of the scholarship fund at the time he made the decision to fund the Plaintiff's litigation.

And an affidavit was filed from Céline Delorme, one of the University's lawyers in the labour arbitration, in which she swore that the University was not using the fact of the defamation litigation as evidence in the labour arbitration and that was untrue.

What the University was doing was using the facts underlying the defamation litigation, the way in which Mr. Rancourt treated Professor St. Lewis, as evidence in the labour arbitration with respect to the remedy but not the litigation itself.

In other words, the litigation was irrelevant to the arbitration. The defamation may be relevant but not the litigation.

So the University provided evidence to counter all of the allegations that Mr. Rancourt made as the basis of his champerty motion. And, Your Honour, the law is clear and Mr. Rancourt doesn't dispute this that the relevance on cross-examination -- the relevance of questions on a cross-examination on a motion is different from discovery and the relevance is determined from what's in the Notice of Motion and the affidavits filed in support.

Justice Beaudoin told Mr. Rancourt that. He

5 told Mr. Rancourt that on the 20th of June, at
pages 39 to 40 of the transcript, Tab 17 of my
Record. He subsequently told it to him again
when he released his reasons on August the 2nd
and that's starting at paragraph 33.

10 Mr. Rancourt wanted to go beyond what he had
put as the basis for his motion and, when he was
cross-examining Mr. Rock and Robert Giroux, the
Chair of the Board of Trustees, and Ms. Delorme,
he answered -- sorry, he asked a number of
questions about issues which were contained
nowhere in the Notice of Motion or the affidavit.

15 He asked questions about Mr. Rock's alleged
personal dislike of him; he asked questions about
a psychiatric evaluation that he alleged the
University had had performed; he asked questions
about whether the University had had him
followed; and he asked questions about the
University ejecting him from the University.

20 When he was cross-examining Ms. Delorme, he
asked her questions which were only relating to
the issues in the labour arbitration. In fact,
it sounded like he was looking for an examination
for discovery in the labour arbitration.

25 These questions had nothing to do with the
issues which were set out in the Notice of Motion
or the affidavit and he asked for irrelevant
documents and they're described at paragraph 27
of my Factum.

30 Mr. Justice Beaudoin properly ruled against
Mr. Rancourt on each and every question and he
made those decisions on the 20th of June.

5 And in my Factum, Your Honour, at paragraphs -- sorry, pages 17 to 21, Mr. Rancourt had alleged that some -- there was some decisions made in the reasons released on August the 2nd which had not been made on June the 20th; but, in fact, I took some time and, in this chart, at pages 17 through 20 ---

THE COURT: I see you tracked them all down.

10 **MR. DOODY:** --- I tracked them all down and every single decision was made and recorded in the transcript on the 20th of June.

15 Your Honour, that ruling -- those rulings by Justice Beaudoin on the 20th of June effectively, to use them in the vernacular, sunk Mr. Rancourt's ship.

20 And so Mr. Rancourt came back to Court on the 24th of July, a date when he knew I would not be in Court because, as the transcript of the 20th of June shows, my work was finished on the 20th of June. I was not supposed to be in the country and that was of no moment because Mr. Dearden was dealing with his issues.

25 So with no notice to me, no notice to my firm who, even in my absence, might have been able to find a lawyer to show up, he appeared in court and what did he do? He sought an adjournment. He sought an adjournment, Your Honour, to avoid having to proceed with the balance of the motion dealing with Mr. Dearden's witnesses just as he had sought adjournments in the past; just as he had sought an adjournment of the case conference on January 26th which was denied by Master

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MacLeod, just as he sought an adjournment of the motion on June 20th to cross-examine Alain Roussy -- something which was of absolutely no moment -- just as he sought an adjournment this morning.

And Your Honour ruled this morning, after he asked for an adjournment, that the adjournment was not necessary.

Mr. Justice Beaudoin ruled, as the transcript of the 20th -- 24th of July shows, that the adjournment request was denied and he was asked to tell Justice Beaudoin the precise reasons for his allegation of a reasonable apprehension of bias just as Your Honour did this morning.

Your Honour denied Mr. Rancourt's request for an adjournment and said: Tell me why you say there is a basis for a reasonable apprehension of bias. Justice Beaudoin did the same thing.

Justice Beaudoin was not convinced and neither, Your Honour, were you.

But on the 24th of July, there can be no question about what happened. Mr. Rancourt deliberately provoked Justice Beaudoin by making allegations and submissions which, in my respectful submission, very few judges would be able to sit placidly and not allow them to upset their judicial equilibrium.

Nevertheless, after taking a 15-minute recess, Justice Beaudoin returned to the Court and he did two things: He ruled firstly that there was no reasonable apprehension of bias on his part as a result of the things that Mr. Rancourt had told him were the basis. The

5 association with the University through the scholarship fund that he had arranged for in the memory of his late son and the fact that his late son had worked at my law firm and that we took the step of honouring his memory by naming a room after him.

Clearly, Justice Beaudoin made a finding that there was no basis for reasonable apprehension of bias.

10 And then, he went on to say: But, Mr. Rancourt, you've succeeded. He said: You've succeeded. Clearly, your intent was to get me off the Bench on this case and you've done it because I cannot fairly sit in judgment on you anymore, you have personally attacked me and I will not deny the effect that that has had on my judicial equilibrium and my ability to fairly judge you.

15 And in doing that, Justice Beaudoin truly showed his metal because he had the wherewithal to admit that he could not carry on with this man before him and he recused himself for the specific reason of the effect that the provocation had had upon him.

20 **M. RANCOURT:** Monsieur le juge ---

MR. DOODY: Mr. Rancourt ---

25 **M. RANCOURT:** ---j'aimerais m'objecter à un point, s'il vous plaît.

30 J'aimerais simplement signaler que Monsieur Doody est en train de décrire ce qui s'est passé le 24 juillet. Il n'était pas présent dans la salle. Il se base sur le 'transcript'

uniquement, à ma connaissance.

Je veux juste le signaler à la Cour.

LA COUR: Oui, il fait, oui, une interprétation de qu'est-ce qu'y se passait dans le -- basé sur la transcription ---

M. RANCOURT: Oui.

LA COUR: --- si je comprends bien. Oui.

MR. DOODY: Mr. Rancourt says today that he never had an opportunity to present an argument on that point. In my respectful submission, he did; but, in any event, he has had such an opportunity today and he cannot establish today a reasonable apprehension of bias nor could he have had then even if he had as long to make submissions as he wants.

And if this case has shown anything, Your Honour, it is that Mr. Rancourt is never satisfied with the time he's given to make his submissions. He will always say he was denied an opportunity to adequately present his case.

He was given a full opportunity today, he took over two hours to make his arguments on reasonable apprehension of bias and he did not establish them.

I'll deal with the law and reasonable apprehension of bias shortly, I just want to turn to the issue of the extension of time.

THE COURT: Yes.

MR. DOODY: The decision was made, in my respectful submission, on the 20th of June. It was made when Justice Beaudoin pronounced from the Bench his decisions and, as I've indicated,

they were all pronounced on the 20th of June.

And Mr. Rancourt knew that those decisions were made on the 20th of June. He cannot be heard to say that he thought they were made on August 2nd when the reasons were released.

How do we know that? Because he wrote Justice Hackland on July 25th asking for directions as to whether a motion is necessary to set aside a judge's decision -- specifically, Justice Beaudoin's decision -- and that letter is found in Volume 2 of Mr. Rancourt's Motion Record, Tab 8, page 443.

So at that -- on July the 25th, he said he wanted to set aside the decision that he'd made on the 20th of June and then, the next day, the 26th of July, he served a motion seeking to set aside the decision of June 20th and that Notice of Motion is at Tab L of Mr. Rancourt's Motion Record, page 2, subparagraph 5(c) of the Notice of Motion prepared for Leave.

On the very next day, the 27th of July, Justice Smith told him that he had no jurisdiction to set aside another judge's order. Justice Smith said:

"Je n'ai pas d'autorité de rejeter une ordonnance d'un autre juge ..."

That's from the transcript of July 27th, page 16, Lines 5 to 9. That's in my Motion Record at Tab 19.

THE COURT: Let me get the right ---

MR. DOODY: Sorry.

THE COURT: Yes, I know who you are, you're the

MR. DOODY: University.

THE COURT: University. University, all right.

MR. DOODY: University Motion Record.

THE COURT: That's right, Motion Record.

MR. DOODY: Tab 19.

THE COURT: Sorry.

MR. DOODY: Page 16.

THE COURT: My shorthand kind of came to a wall there.

That's at page 16, lines whatever ...

MR. DOODY: Lines 5 to 9, yes.

My friend, Mr. Dearden, says it's also in his Compendium.

THE COURT: Yeah, I think it's -- it'd even be in there.

MR. DOODY: He served another Notice of Motion, on the 30th of July, which in its prayer for relief sought to set aside the ruling of Justice Beaudoin and that was -- that is found in the University's Motion Record, Tab 12, page 55.

The rulings sought to be set aside were the rulings made on June 20th and we know that because Mr. Rancourt wrote Mr. Justice Smith on the 31st of July saying -- as I say in paragraph 57 of my Factum ---

THE COURT: We've seen it.

MR. DOODY: Yeah.

He says:

"He served and filed on the 30th of July a Reasonable Apprehension of Bias Motion that would set aside all decisions of Justice

Beaudoin in the action. This would have an impact on the ongoing Refusals Motion with which you were seized."

And the reason it would have an impact on the ongoing Refusals Motion was because he would then have an opportunity to re-argue the decisions Justice Beaudoin made on the 20th of June.

So -- and I note -- and I won't take you to it but, in the first paragraph of Justice Smith's decision of September the 6th, he ruled that Justice Beaudoin had made rulings on the 20th of June.

THE COURT: One second, I don't have -- run that again.

MR. DOODY: Sorry.

In Justice Smith's decision, ---

THE COURT: Yes?

MR. DOODY: --- on September the 6th, which ---

THE COURT: Have I looked at that closely? I don't know if I have?

MR. DOODY: It's in Mr. Dearden's Compendium of Argument on the 30 -- July 31st letter. That would be one of the three you were just handed up.

It's at Tab 6.

M. RANCOURT: Monsieur le juge, si je peux dire quelque chose qui pourrait nous sauver beaucoup de temps?

LA COUR: Oui?

M. RANCOURT: Je veux dire à mon ami que je ne conteste pas l'idée qu'il y a eu des décisions de prises le 20. Je ne conteste pas ça et c'est pas

utile de -- de faire tous ces arguments.

LA COUR: O.k.

M. RANCOURT: Par contre, il y a des décisions qui n'ont pas été prises le 20 et qui -- qui ont ensuite été pris le 2 août.

THE COURT: I think he understands your arguments.

MR. DOODY: No, the point -- the point, Your Honour, and I'm sure you understand it is it's not that Justice Beaudoin made decisions on the 20th of June, Mr. Rancourt knew he made decisions. He didn't learn about the decisions on August the 2nd, he learned about the decisions on the 20th of June and he knew about them throughout the 49 days between the 20th of June and August the 8th when he served his Notice of Motion.

And so his suggestion that the decision was made on August the 2nd is contrary to all of the actions which Mr. Rancourt took over the intervening period.

And the time runs, Your Honour, for filing a Leave to Appeal from the pronouncement of the decision. That's clear in the law.

THE COURT: And it's very short; eh?

MR. DOODY: It's seven (7) days.

THE COURT: Yes.

MR. DOODY: And Mr. Rancourt met that timeframe earlier in this action when he served and argued a Leave to Appeal Motion from the refusal of Justice Beaudoin to set a -- to set a date for the hearing of the motion that Mr. Rancourt

wanted to bring allowing the public to attend the cross-examination.

And that decision of Justice Smith denying him Leave to Appeal on that ---

THE COURT: So let me -- let me just understand your argument.

If he had continued on -- with the motion that was adjourned to the 24th and he decided all the rest of the points that day, he would have had to file his Notice of seeking leave on what day for the decisions on the 20th?

MR. DOODY: June 27th. They were made. The decisions were made.

And that -- and, Your Honour, that ---

THE COURT: I have some difficulty with that.

MR. DOODY: Well, that's ---

THE COURT: I'll just tell you.

Do you have jurisprudence for that?

MR. DOODY: I do. Yeah, I do, Your Honour.

THE COURT: Okay.

M. RANCOURT: If I could just take you to ---

THE COURT: It seems to me one motion he adjourns it and ---

MR. DOODY: One motion but it's clearly two decisions.

I left. My client had no interest in what happened after June 20th because all the decisions were made.

And that's the way the parties have proceeded. Justice Smith said: Now, I'm going to deal with the issues arising out of ---

THE COURT: But he would have fooled many a

lawyer with that one, let me tell you. So getting somebody who's non -- unrepresented, you're ---

MR. DOODY: Well ---

THE COURT: --- you're going to blow that one completely by him.

MR. DOODY: Well, except the difficulty, Your Honour, is he was told. He was told on the 24th of July -- sorry, he learned ---

THE COURT: So that's a little different.

MR. DOODY: --- on the 24th of July.

THE COURT: Yeah.

MR. DOODY: He was told on the -- on the 27th of July by Justice -- by Justice Smith who said: You're going to have seek leave to appeal.

He was told it again by Justice Smith ---

THE COURT: It's too late on the 27th; isn't it?

MR. DOODY: Um, well, I suppose the question might -- if he's -- if he truly learned of the basis for the reasonable apprehension of bias on the 22nd of July, which is what -- which is what the evidence is -- then I supposed the time may run from the 24th of July when he asked Justice Beaudoin to recuse himself and Justice Beaudoin refused.

THE COURT: And do I take no consideration that he's sort of going down the wrong path and trying to -- and if this were a self-rep, actually, should get a little bit of leeway here?

MR. DOODY: But, Your Honour ---

THE COURT: Are you looking to prejudice? Is that what ---

MR. DOODY: Well, Your Honour, let me put it this way: He was told. It's not that he didn't know, he was told, on more than one occasion, that he was doing this wrong.

He was told it -- and I'm just looking for the place in my Factum -- if you turn to paragraph 53 of my Factum, page 27, so I point out: the Court told Mr. Rancourt on the 27th of July -- Justice Smith told him:

"I have no jurisdiction to set aside another judge's order, your only remedy is to appeal or seek leave to appeal."

So he was told that on the 27th of July. That's the same remedy he sought in time -- and served a motion in time for -- dealing with Justice Beaudoin's order refusing to schedule his motion seeking to allow the public into the examination for discovery.

And I've put the specific quote at paragraph 54. He says:

« Je ne suis pas en appel ici. Il n'y a pas de motion pour permission de faire appel. Je n'ai pas d'autorité ... d'un autre juge. »

So this is not a motion for Leave to Appeal.

Then, three days later, he serves another Notice of Motion seeking a judicial determination that -- that the decisions were invalid because of reasonable apprehension of bias.

And then, in paragraph 57 of my Factum, on page 28, I point out that Justice -- on the 31st of July, he wrote to Mr. Justice Smith and said:

"Yesterday, I served and filed a Reasonable

Apprehension of Bias Motion that, if successful, would set aside all decisions of Justice Beaudoin. I've asked Regional Senior Justice Hackland and yourself via an e-mail to the Trial Coordinator to schedule my Reasonable Apprehension of Bias Motion as soon as is practical."

And on the 31st of July, he got a letter back from Justice Smith saying:

"I wish to clarify, as I advised you at the Motion on July 27th, that I have no jurisdiction to set aside the decisions of Justice Beaudoin ..."

So he was told by the Court twice: on the 27th of July and on the 31st of July that he had no jurisdiction to schedule any motion to set aside Justice Beaudoin's order and he had -- was specifically told on the 27th of July this is not a motion for Leave to Appeal.

And he knew what a Motion for Leave to Appeal was yet he waited.

THE COURT: How do we know he knew what a Motion for Leave of Appeal was?

MR. DOODY: Because, Your Honour, this was -- well, the point I was making earlier, he had -- he had filed a Notice of Motion for Leave to Appeal ---

THE COURT: Already; eh?

MR. DOODY: --- from -- from Justice Beaudoin's refusal to schedule a motion ---

THE COURT: All right.

MR. DOODY: --- to allow the public into a

discovery.

THE COURT: So when did he do that then?

MR. DOODY: That -- the decision was March 28th of this year and it's at Tab 5 of Mr. Dearden's Compendium ---

THE COURT: All right.

MR. DOODY: --- about Justice Smith's July 31st letter.

THE COURT: All right.

MR. DOODY: And that the reasons are there.

And he served that Notice of Motion seeking Leave to Appeal in a timely manner.

So he knew what a Motion for Leave to Appeal was. He appeared and argued that over the course of the day here and -- and ---

THE COURT: Can you tell me what the other three -- just before I forget about this -- can you tell me what the three matters were before Justice Beaudoin on the 24th, please?

I know you've told me them once but I don't have the grasp completely of the file.

So just ---

MR. DOODY: Well, there were ---

THE COURT: There's a continuation -- the rest of the motion.

MR. DOODY: Well, on the 24th of July ---

THE COURT: The 24th, yes.

MR. DOODY: --- there was ---

THE COURT: I know I'm jumping ahead, it was in my brain so I made a note to myself to find it.

MR. DOODY: There was the issues related to Mr. Dearden's witnesses ---

THE COURT: Yes.

MR. DOODY: --- on cross-examination of the champerty motion.

THE COURT: That flows off from the -- he would have done it on the 20th if he could.

MR. DOODY: He would have done it on the 20th.

THE COURT: All right.

MR. DOODY: Also, on the 24th, there was a motion dealing with refusals during the examination for discovery which had nothing to do with me ---

THE COURT: All right.

MR. DOODY: And ---

MR. DEARDEN: Both -- both discoveries.

MR. DOODY: And both ways.

THE COURT: Okay.

MR. DOODY: So there was a Plaintiff's Motion and a Defendant's Motion with respect to refusals on the -- on the examinations.

THE COURT: So that was the third one then?

MR. DOODY: M'hm.

THE COURT: Going -- coming back?

MR. DOODY: M'hm.

THE COURT: All right.

MR. DOODY: So ---

THE COURT: And all those he adjourned? All those he settled those?

MR. DOODY: All those he adjourned.

THE COURT: All right.

MR. DOODY: I note also that in the reasons given by Justice Smith on the refusals which were released on September the 6th, Mr. Justice Smith writes -- and this is at paragraph 5:

5 "Rancourt further advised that he wished to overturn Justice Beaudoin's rulings on the Refusals Motion related to the representatives of the University. He sought an adjournment for this purpose. I advised Rancourt at the hearing ..."

The hearing which was July 27th:

10 "... and in a subsequent letter that I did not have jurisdiction to overturn an order of Justice Beaudoin. Rancourt has subsequently brought a motion in Divisional Court seeking Leave to Appeal Justice Beaudoin's decision which is the appropriate procedural step."

15 He went on to say:

"In addition, the balance of the Refusals Motion with regard to St. Lewis was not related to Rancourt's possible appeal of Justice Beaudoin's order and for this additional reason the adjournment was not granted."

20 So Justice Smith has already ruled that the issues relating to the refusals of Professor St. Lewis' witnesses was not related to Justice -- or Mr. Rancourt's possible appeal of Justice Beaudoin's orders. They are two separate issues.

25 So -- I'll just find my point here -- so I say the time ran from June 20th -- well, perhaps from the 24th of July if one accepts that he didn't find out about the April Citizen article until the 22nd of July. He served his Motion for Leave to Appeal on August the 8th. August the 8th is 15 days after the decision of Justice Beaudoin

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of July 24th which was that he was not -- there was no reasonable apprehension of bias and there can be no doubt that the time runs from the pronouncement of the decision.

And I have set out ---

THE COURT: Yes.

MR. DOODY: --- in my Factum the authorities for that: Mr. Brown's text, a case called *Myers*.

And, I've also set out -- and this is in -- at Tab 4 of my authorities -- a decision of Justice Rouleau in the Court of Appeal on a Chambers Motion to extend the time to file a Motion for Leave to Appeal in the Court of Appeal and Justice Rouleau says, at paragraph 11, what the test is to extend the time to file a Notice of Appeal.

And he said:

"In considering ... "

paragraph 11:

"In considering whether to exercise its discretion to extend the time for the filing of a Notice of Appeal, a Court generally considers the following factors: (1) whether the Appellant formed an intention to appeal within the relevant period; (2) the length of the delay and explanation for the delay; (3) and in prejudice to the Respondent; (4) the merits of the appeal."

He went on to say:

"The Court also considers whether the justice of the case requires the granting of the extension."

5 Your Honour, there is no evidence before the Court of the delay after July 24th. There's absolutely no evidence of that. There's evidence of the reason for the delay before the 24th of July. Mr. Rancourt has sworn that he didn't learn about it until the 22nd of July.

M. RANCOURT: Objection, monsieur le juge.

LA COUR: Vous aurez une chance de répondre. Ça c'est pourquoi on utilise les répliques.

10 **M. RANCOURT:** O.k.

LA COUR: Vous devez prendre ça en note et, voilà, ici, il dit -- voilà, il dit ça, bon, bien, ça c'est ma réponse.

M. RANCOURT: Oui.

15 **MR. DOODY:** And, Your Honour, given Mr. Rancourt's expressed by his actions desire to avoid and delay every single step in this action, in my submission, it was more incumbent upon him than normal to explain his delay.

20 And the -- the reason -- he cannot say that the reasons of August the 2nd had anything to do with the delay because the basis of his Application for Leave to Appeal had nothing to do with the reasons. It was all about reasonable apprehension of bias.

25 If I could then just turn to the law on reasonable apprehension of bias, Your Honour, I'm not going to go through all the cases in my Factum. I'd just like to take you to one case and that's the same case that Mr. Rancourt took you to, the *Wewaykum* case in the Supreme Court of Canada in 2003 and it's at Tab 8 of my

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authorities.

And the *Wewaykum* case, you'll recall, this is the case where -- where Justice Binnie took part in a decision which was the culmination of ---

THE COURT: You know, you're entitled to stand up and say: Your Honour, that case is in my -- you maybe forgot but we were looking for that case and we didn't have it in front of me and he had to read it.

MR. DOODY: Oh no, it wasn't this case.

THE COURT: Was it not this case?

MR. DOODY: No, no, no, no, that was ---

THE COURT: Oh, okay.

MR. DOODY: --- the case called *Button*.

THE COURT: No, no, *Button* -- but, in any event ---

MR. DOODY: Oh, I thought everyone had -- sorry, I thought ---

THE COURT: That's okay. I'm quite sure -- I'm quite sure that, you, Mr. Doody ...

MR. DOODY: In any event ---

THE COURT: Because I know you would have told me that.

MR. DOODY: This is the case where Justice Binnie had had some involvement in the -- in the action by assigning counsel when he was Associate Deputy Minister of Justice and then, some 20 years later, it comes before him in the Supreme Court of Canada and he'd forgotten.

And, after the decision was rendered, the Plaintiffs found out about it and moved to set it aside on the basis of reasonable apprehension of

bias.

But I cite it for two points and the first is at tab -- page -- paragraph 60, page 22.

THE COURT: Yes. Page 22?

MR. DOODY: Yeah, page 22, paragraph 60 and I did not sidebar this but this is just short form to avoid taking you to the ---

THE COURT: I have something side-bared up at the top.

MR. DOODY: Yeah, and I'll come back to that.

THE COURT: All right.

MR. DOODY: But paragraph 60 ---

THE COURT: Oh, 60? All right.

MR. DOODY: --- the Court cites the ---

THE COURT: Yes.

MR. DOODY: --- the key case on reasonable apprehension of bias and they say ---

THE COURT: The *Chestnut*.

MR. DOODY: Yes, the *Chestnut*:

"In Canadian law, one standard has now emerged as the criterion for disqualification."

and Mr. Rancourt spoke of the British law about

'a Bright-Line test'. In my respectful

submission, there's no 'Bright-Line test' in

Canadian law. The Canadian law is clear -- but

he didn't use the words "Bright-Line test", he

said it's -- I forget what he said but he said if

there's any involvement with a contract, that's

it, game over.

But this is clearly the only test in Canada:

"... the apprehension of bias must be a

reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

And, Your Honour, you apply to that one -- one further (inaudible) which is in the preceding paragraph where the Court talks about the importance of the Principle of Impartiality in a judge as opposed to another sort of decision-making.

And at paragraph 59, the Court writes:

"Viewed in this light, "[i]mpartiality is the fundamental qualification of a judge and the core attribute of the judiciary" [...]."

"It is the key to our judicial process, and must be presumed. As was noted by L'Heureux-Dubé J. and McLachlin J. [...] in *S. (R.D.)*, [...] the presumption of impartiality carries considerable weight, and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption.

Thus, while the requirement of judicial impartiality is a stringent one, the burden is on the party arguing for disqualification

to establish that the circumstances justify a finding that the judge must be disqualified."

And then, at paragraph -- so it's the test --

what I read to you: a reasonable one over reasonable and right-minded persons who've obtained the necessary information. There's a very strong presumption the judge is impartial.

And then, at paragraph 76, the Court comes back to that point, at page 26, where the Court notes:

" First, it is worth repeating that the standard refers to an apprehension of bias that rests on serious grounds, in light of the strong presumption of judicial impartiality. In this respect, de Grandpré J. added these words to the now classical expression of the reasonable apprehension standard:

"The grounds for this apprehension must, however, be substantial, and I ... refus[e] to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience"."

So if I may put it in the vernacular, Your Honour, -- although it's always a bad idea to try to do -- this is not -- the test is not quite what the man on the Clapham omnibus would think. It's what would a well-informed person on the Clapham omnibus, having thought the matter through and not applying an overly-sensitive conscience, conclude.

Is it more likely than not that Justice

Beaudoin, prior to being provoked, would not have decided the matter fairly?

And, in my respectful submission, there can be no doubt of the answer to that question.

So, Your Honour, when you take that test and you apply it -- you apply the Leave to Appeal test to it -- and I won't take you through the law on that, Your Honour is well aware of the test on Leave to Appeal. It's a very strong high test. There are two legs and, in my respectful submission, Mr. Rancourt cannot point to any conflicting decision on the issue of the applicable law to reasonable apprehension of bias. It cannot be said that it is desirable that Leave to Appeal be granted because, among other things, Mr. Rancourt does not allege that Justice Beaudoin made any error of law. In fact, he even -- he even concedes that Justice Smith made no error of law, he just says he's made an error applying the law.

So if Leave to Appeal is granted, this would be just one more step in the procedural maze that Mr. Rancourt has created and that, in my submission, is not desirable.

On the second leg, there is no good reason to doubt the correctness of Justice Beaudoin's conclusion that, prior to being provoked, he was not in a position of reasonable apprehension of bias and a determination of that question given the lack of good reasons to doubt it, does not involve matters of such importance that leave should be granted.

And just before I turn over the podium to Mr. Dearden, I'd just like to deal with Mr. -- turning off my hearing aid because I don't need that; do I?

THE COURT: I thought your ears were cold. I thought your ears were cold.

(LAUGHTER/RIRES)

MR. DOODY: If I could just turn to Mr. Rancourt's submission that -- that Justice Smith had the jurisdiction to hear a motion to set aside Justice Beaudoin's decision on the basis that he was a judge of the same court.

And, in my respectful submission, that -- that is not -- it cannot be the law. There is never jurisdiction in one judge of the Superior Court to set aside the decision of another judge of the Superior Court on the basis that he had erred in law and if he proceeded when he was in a reasonable apprehension of bias that would be an error of law.

What the law says is not you have to apply to the court -- the court in which the judge sat who you say was in a reasonable apprehension of bias, no, you have to apply to the judge who you say is in a position of reasonable apprehension of bias.

And the Supreme Court makes that clear. Justice Cory in *RDS* which is at Tab 7 of my authorities and at paragraph 99 -- and, in fact, this paragraph is quoted in Mr. Rancourt's *Factum* at paragraph 140 -- but if you turn to paragraph 99 of that decision on page 29, Justice Cory writes this -- it's Tab 7:

"If actual or apprehended bias arises from a judge's words or conduct, then the judge has exceeded his or her jurisdiction."

and that, of course, is an error of law:

"This excess of jurisdiction can be remedied by an application to the presiding judge for disqualification if the proceedings are still underway, or by appellate review of the judge's decision."

and, of course, the law is also you have to apply it to the presiding judge as soon as you learn of it. You can't lie in the weeds and wait to see whether you won or lost. You have to apply with the judge.

And that's what Justice Cory says: not apply to the court. Another judge of the same court would have any jurisdiction to overturn it.

Clearly, Justice Beaudoin was the person to whom Mr. Rancourt was required to apply. He did apply on the 24th of July after Mr. Justice Beaudoin refused his adjournment request and he got his decision.

So his remedy after that was to seek Leave to Appeal which he's done. So there can be no doubt but that Justice Smith had no jurisdiction to do anything as Justice Smith repeatedly told Mr. Rancourt.

So those, Your Honour, are my submissions.

THE COURT: Thank you.

MR. DOODY: Unless Your Honour has questions.

THE COURT: Before we do anything, it's twenty after three ---

MR. DEARDEN: Your Honour, if I could just have five minutes, Your Honour ---

THE COURT: Sure.

M. RANCOURT: Monsieur le juge ---

MR. DEARDEN: --- to make my points -- just a second, Mr. ---

THE COURT: I'm just -- we're talking about taking a break now. You want five more minutes?

MR. DEARDEN: Five minutes to deal with the bias per se and the extension of time and then I'll ---

THE COURT: Okay, so we'll just finish that up and then we'll go for the break.

M. RANCOURT: Non, monsieur le juge, j'aurais besoin d'aller aux toilettes, d'une part, et deuxièmement ---

LA COUR: J'ai besoin de -- qu'est-ce que c'est? Quelle lettre?

M. RANCOURT: J'aurais besoin d'aller aux toilettes.

LA COUR: Ah, aux toilettes? Bon, ça -- ça c'est une très bonne raison.

M. RANCOURT: Oui.

LA COUR: Vous aimerez donc -- donc, on va -- we're going to take a health break.

M. RANCOURT: Et, aussi, je vais adresser Monsieur Dearden par rapport à ses nouveaux documents. Ça serait le bon temps de faire ça?

LA COUR: Oui, c'est le moment de le faire aussi.

M. RANCOURT: Et ---

THE COURT: So he's going to talk about your documents whether they are ---

MR. DEARDEN: The Compendium?

THE COURT: Yeah.

M. RANCOURT: Oui.

THE COURT: But we're going take ---

MR. DEARDEN: There's nothing new in it.

THE COURT: Santé calls, as they say, so we'll do that.

MR. DEARDEN: How long, Your Honour?

THE COURT: Oh, 15. We're really sticking to it. So I have -- well, I have -- so I guess we'll go a little bit longer than 15. Come back at 20 to. Is that correct?

That'll give you a bit more time to do all the things you have to do. And I'll stay to five if we have to; okay? That's not what I was intending to do but I would.

THE COURT CLERK: All rise.

THE REGISTRAR: This Court is now in recess.

--- L'audience est suspendue à 15h22

--- L'audience est reprise à 15h39

THE COURT CLERK: À l'ordre, s'il vous plaît. Order, please. Veuillez vous lever. Please rise.

LE GREFFIER: La Cour supérieure de justice est maintenant recommencée. The Superior Court of Justice is now reconvened. You may be seated.

M. RANCOURT: Bon, monsieur le juge, on n'a pas pu résoudre la question des documents nouveaux qui sont dans ces -- dans ces machins-là et on est dans le désaccord parce que j'ai demandé à Dearden de me signaler -- Monsieur Dearden de me signaler où étaient certains de ces documents et

il ne veut pas me répondre. Il dit simplement:
« It's in the record. » et j'ai demandé: « Is it
in the Motion Record?" Il me répète: "It's in
the Record."

Et, en plus, il y a un document en particulier
qui est très préjudiciable à mon égard ---

LA COUR: Oui.

M. RANCOURT: --- que je viens de voir pour la
première fois aujourd'hui.

Et donc, c'est une question qui me concerne
beaucoup.

LA COUR: Voulez-vous me signaler ce document-là?

M. RANCOURT: Oui, c'est ---

LA COUR: Sauf que je pense que j'ai déjà permis
ces choses-là.

M. RANCOURT: C'est le document dans le ---

LA COUR: Oui, juste laissez-moi ---

M. RANCOURT: O.k.

LA COUR: J'ai tellement devant moi maintenant je
commence à ...

(COURTE PAUSE/SHORT PAUSE)

LA COUR: Voilà, j'ai le 'Compendium' et aussi
j'ai ...

(COURTE PAUSE/SHORT PAUSE)

THE COURT: Yes?

M. RANCOURT: Alors, je me -- je m'adresse au
'Compendium' pour 'Defendant's Motion for Leave
to Appeal'.

LA COUR: Oui. Le grand ou le petit?

M. RANCOURT: Donc, le plus gros des deux.

LA COUR: Oui, c'est ça.

M. RANCOURT: Et je vais à l'onglet 3.

LA COUR: Oui.

M. RANCOURT: Et là, Monsieur Dearden a copié quelque chose qui vient de Facebook et qui ---

LA COUR: O.k.

M. RANCOURT: --- qui parle de moi et il a souligné le mot « anarchiste » et « anarchy ».

Et ça je trouve ça vraiment -- vraiment désagréable pour deux raisons: une, c'est que ce n'était -- ce n'est pas ---

LA COUR: Bien, écoutez, peut-être -- peut-être le document n'est pas là à quelque part, je suppose, parce que -- I'm sorry, perhaps de document isn't there. Is it?

Does it matter? Do we have to ---

MR. DEARDEN: Your Honour, I couldn't give him the site ---

THE COURT: Yeah.

MR. DEARDEN: --- in the 14 feet of material that he's relying on.

That Facebook page of his where he describes his activities as "anarchy" and himself as an "anarchist" has been attached to countless affidavits in this proceeding ---

THE COURT: Yes.

MR. DEARDEN: --- in this action so ...

M. RANCOURT: Donc, ce n'est pas dans la motion. Je m'attendais pas à ce que Monsieur Dearden mette ---

LA COUR: Croyez -- croyez-vous -- moi, je ne me baserai pas sur les -- qu'est-ce qu'on dit -- les réflexions qui sont faites sur les personnes.

M. RANCOURT: Sur Facebook, entre autres, par

exemple?

LA COUR: De toute manière, c'est ça; o.k.?

M. RANCOURT: Mais -- mais, monsieur ---

LA COUR: Pour moi, j'ai une chose qui est devant moi maintenant, je devrai décider selon l'argumentation des personnes et peut-être -- peut-être y va soulever ce point-là mais c'est -- c'est pas -- c'est pas un facteur qui va me -- qui va me prendre pour décider la cause. Je garantis de cela; o.k.?

M. RANCOURT: Merci.

LA COUR: Voilà.

M. RANCOURT: Mais il y a un élément qui est très perturbant dans cette affaire parce que j'ai écrit à Monsieur Dearden une -- un courriel en lui disant: « Ne faites pas ça parce que vous savez très bien que le mot « anarchie », le sens de la rue de ça est très différent du sens académique, que j'ai donné des présentations sur ce thème politique, que j'ai été invité à des conférences pour parler de ça.

Je lui ai écrit un courriel en lui expliquant et en lui disant de se retenir ---

LA COUR: Les moutons, on va -- on va se limiter à nos moutons, comme on dit en français, je pense, pour dire qu'on va juste rester aux choses pertinentes et ça je suis -- je suis un juge qui dit plus ou moins ce qui est devant moi aujourd'hui qui compte.

Si y a peut-être un lien ou quelque chose comme ça mais ce qu'il y est devant moi aujourd'hui c'est: Est-ce que on a -- est-ce que

dans la situation où, par les faits, on devrait donner permission pour vous et ---

M. RANCOURT: J'estime que ce document est un abus, monsieur le juge.

LA COUR: O.k.

M. RANCOURT: Ça c'est un abus.

LA COUR: Oui. Bon.

Did you catch all that? I'm saying, basically, what's in front of me is really what's of interest to me.

MR. DEARDEN: Thank you, Your Honour.

So if I could just finish ---

THE COURT: Yes.

MR. DEARDEN: --- on the bias.

THE COURT: You were just going to add your views on it, yes.

MR. DEARDEN: But I'll be very brief because Mr. Doody and I split up what's going to be referred to.

So first off, on the point on when he was giving you the test that -- or deciding whether it is a reasonable apprehension of bias, you note that Mr. Rancourt or I would ask the Court to note that when Mr. Rancourt was making his submissions on fear in the apprehension, he kept on saying "I".

Well, it isn't his fear that matters, it's the reasonable right-thinking person test that matters; not Mr. Rancourt's fear that he consistently kept on talking to the Court about this morning.

The second point, Your Honour, is on this

5 whole issue of Mr. Rancourt's Leave Application being 49 days late, I just want to draw your -- Your Honour's attention to the *Westinghouse* decision that I have in the Leave Compendium at Tab 14.

THE COURT: The Leave?

MR. DEARDEN: Yeah, that's the ---

THE COURT: All right.

10 **MR. DEARDEN:** That's the big one. The big one that you just looked and you just had.

THE COURT: Oh, Compendium? Yes.

MR. DEARDEN: The Compendium.

THE COURT: The Compendium. That word is not sticking in my brain for some reason or other.

15 **MR. DEARDEN:** The Compendium ---

THE COURT: I want to go somewhere else than "Compendium". I have so many books in front of me.

MR. DEARDEN: Yeah. All right then.

20 So at Tab 14, you should have the *Westinghouse* decision in the Federal Court of Appeal.

THE COURT: Okay. Just a minute, I'll get there then, please.

25 Yes, I have it.

MR. DEARDEN: Now, Your Honour will remember the old Section 28 of the *Federal Court Act* days when you had 10 days to ---

THE COURT: Gave -- gave rise to ---

30 **MR. DEARDEN:** --- file ---

THE COURT: --- more -- more extensions that you could pass a -- you can imagine.

MR. DEARDEN: Well, you remember the 10-day Rule.

THE COURT: Yes.

MR. DEARDEN: Yet, in this case, *Westinghouse* failed to file a Notice of Judicial Review in the Federal Court of Appeal from a Canadian Import Tribunal decision because it was waiting for the reasons and the reasons didn't come out until after the 10-day period.

And if you look at page 4 -- there's no paragraph numbers in this decision -- but at page 4 of Tab 14 of *Westinghouse*, the Court rejects that waiting for release of reasons would be a valid ground for granting an extension of time.

THE COURT: Yes.

MR. DEARDEN: They reject that.

So that's what you see at the bottom of page 4 of ---

THE COURT: I don't think he's ever said he's waiting for reasons ---

MR. DEARDEN: Well, that would ---

THE COURT: --- and we have -- I got Mr. Doody's point is that we don't know -- I don't think -- maybe he could tell us where he stands -- peut-être vous pourriez nous dire -- mais par après -- pourquoi vous avez pas déposé votre chose.

Parce que vous avez droit de répliquer, comme je vous ai dit déjà.

M. RANCOURT: Oui, j'ai donné le compte-rendu détaillé dans mon affidavit ---

LA COUR: Oui, mais on va regarder ça.

M. RANCOURT: Oui, mon affidavit.

THE COURT: All right.

MR. DEARDEN: His affidavit that's inadmissible.

So, Your Honour, my second point on this is that, really, what Mr. Rancourt has done with the Leave Application is a collateral attack on the rulings that Justice Beaudoin had made going back to February.

This is -- and I deal with the collateral attack on rulings that Justice Beaudoin made that Mr. Rancourt, of course, says his central point of all this is to set aside all the rulings that Justice Beaudoin made.

That's a collateral attack. It's an *ex post facto* attempt by Mr. Rancourt to reverse those rulings which he never appealed and my Factum deals with this at paragraphs 43 to 48.

In my submission, Your Honour, the plan of attack all along by Mr. Rancourt was to lie in wait for the July 24th scheduled date because, you know, things were set up for July 24th weeks -- weeks before the June 20th rulings were issued and he just waited.

You know, by his own admission, he says he didn't learn of the Ottawa Citizen article that he read to Judge Beaudoin the morning of July 24th, his own admission is he learned it on July 22nd.

Well then, why did he not give Mr. Doody and I and the Court notice on July 22nd, July 23rd or before we started on July 24th?

No, he just waited ---

THE COURT: You want me to find as a fact -- you want me to find as a fact, in this little motion,

first time I'm in, that I am going -- I'm going to make that finding?

I can't do that, sir, you know that.

MR. DEARDEN: Collateral attack? Yes, you can.

THE COURT: Well, no, that he knew it from -- from a time way beforehand.

I mean, I can't -- I can't ---

MR. DEARDEN: No, no. No, Your Honour, there's no dispute. By his own evidence on July the 22nd ---

THE COURT: The 22nd, yes, on July 22nd.

MR. DEARDEN: Okay? So why did he wait?

That's a fact. It's undisputed; okay? Two days later ---

THE COURT: Well, you have him lying in wait from way way back there; okay?

MR. DEARDEN: I have him lying in wait for two days.

THE COURT: Well, you talked about -- you said ---

MR. DEARDEN: He should have immediately ---

THE COURT: Anyway, let -- let's just -- just let's get the -- you know, what this is all about.

MR. DEARDEN: Well, it is what this is about.

THE COURT: Well, perhaps it is but, you know, me coming in with my one motion, that's not where I am. I can't be there because it's very complicated.

I don't know the whole story, you must recognize that.

I know you're telling it but, for that, you

kind of -- you know, you need almost an affidavit to go through the whole thing, not somebody recounting it in a Factum or whatever it is.

So just -- well, let's just stick with what we got here because I'm -- had I been a management case judge, obviously, I think I would be in a much better position to deal with this and, unfortunately, he's not here and that's one of the -- you know, perils of being somebody who's parachuted in at the last moment to take the -- to take the motion so ...

Anyway.

MR. DEARDEN: I will move ---

THE COURT: Yeah.

MR. DEARDEN: --- to my next point, Your Honour, which is dealing with this letter of July 31st that is subject to a Leave Application before you.

THE COURT: Yes.

MR. DEARDEN: My first point is that the July 31st letter of Justice Smith is not an order; okay?

THE COURT: Yes.

MR. DEARDEN: I deal with this at paragraphs 12 to 14 in the Factum.

You will see if you now, Your Honour, have the Compendium for the July 31st letter which is six tabs in ---

THE COURT: Yes.

MR. DEARDEN: At Tab 1, I've given you Section 19.1 of the *Courts of Justice Act* which says that an appeal lies to the Divisional Court from the

interlocutory order. You know that.

Tab 2 contains Rule 62.02 which says that Leave to Appeal to the Divisional Court under Section 19.1(b) of the Act shall be obtained from a judge other than the judge who made the interlocutory order; okay? So "order" again.

July 27th hearing, Your Honour, before Justice Smith, you'll see a partial transcript of that at Tab 3 of the Compendium. Page 16 which Mr. Doody referred you to, that was the first time ---

THE COURT: Hang on here. What page?

MR. DEARDEN: So at Tab 3 of the Compendium.

THE COURT: Yes, what page? I have 44.

MR. DEARDEN: Page 16 -- the second page in should be "16" ---

THE COURT: Oh, I see, they're not -- okay, all right. Sorry.

MR. DEARDEN: Yeah.

THE COURT: Sorry. Yup.

MR. DEARDEN: So page 16, Line 5 to 10?

THE COURT: Yes.

MR. DEARDEN: You see that Justice Smith informs Mr. Rancourt that he's not sitting on an appeal, he doesn't have authority to reject an order of another judge and ---

THE COURT: And this is:

« Peut-être on devrait répondre,
premièrement ... »?

MR. DEARDEN:

« Peut-être on devrait répondre,
premièrement, ... »

yeah.

LA COUR: (inaudible)

MR. DEARDEN:

« ... je suis d'accord, je suis pas ... »

LA COUR:

« ... en appel ici ... »

MR. DEARDEN:

« ... en appel ici ... »

LA COUR: O.k.

MR. DEARDEN:

« Il n'y a pas de motion pour ... »

LA COUR:

« ... permission de ... »

MR. DEARDEN:

« ... permission de faire appel. Je n'ai pas d'autorité de rejeter une ordonnance d'un autre juge. »

And then, at 45, Your Honour -- again, this is July 27th, at Line 20.

THE COURT: Yes.

MR. DEARDEN: This is when Justice Smith, at page 45, says (inaudible) against the decisions of Judge Beaudoin, as I've indicated several times, I had nothing to do with the decision of Judge Beaudoin. I have no authority to "casser" -- I'm not sure what that means -- "... ses decisions".

THE COURT: "Casser" means to overturn.

MR. DEARDEN: To overturn.

"Ça c'est des droits d'appel et vous êtes au courant que vous avez le droit de le faire. »

So he tells him then, on July 27th, and he tells him again on July 31st and we see that letter at

Tab 4 where I ask Your Honour to -- to note that that letter says that Justice Smith is -- advised -- he's advising Mr. Beaudoin (sic) that he has no jurisdiction.

Again, that the point here is there's no order that's in play here. So if you look at Tab 4 of the Compendium, Your Honour, the first line of the letter from Justice Smith to Mr. Rancourt says:

"I wish to clarify as I advised you at the motion on July 27th that I have no jurisdiction to set aside decisions of Beaudoin J. and I will not be scheduling any motion for this purpose."

He didn't say "I have decided", he's saying "I'm advising you".

All that's happening here, Your Honour, is Justice Smith is providing him information. There's no order here. There's no decision that would be subject to a Leave to Appeal Application.

And then, again, Your Honour, if you go to Tab 6 of the Compendium -- so this is Justice Smith's Reasons for Decision on the Refusals Motion pertaining to Joanne St. Lewis ---

THE COURT: Yes?

MR. DEARDEN: --- if you go to paragraph 5, Justice Smith, of his September 6th decision, repeats what he had said in his letter:

"Rancourt further advised that he wished to overturn Beaudoin J.'s rulings on the Refusals Motion related to the

representatives of the University. He sought an adjournment for this purpose. I advised Rancourt at the hearing and then in a subsequent matter that I did not have jurisdiction to overturn an order of Beaudoin J."

Again, ---

THE COURT: Mr. Doody -- Mr. Doody pointed that out to me as well.

MR. DEARDEN: Right.

So: I didn't have jurisdiction, you should be going to Divisional Court.

So he didn't -- Justice Smith did not dismiss Mr. Rancourt's July 30th -- 31st bias -- or 30th Bias Motion as Mr. Rancourt alleges in his materials. He didn't dismiss anything. There was no order.

THE COURT: Donc, peut-être -- what I don't understand is what happened to the motion?

Because the motion was filed; was it?

MR. DEARDEN: The July 30th motion?

THE COURT: Yeah. Was it filed in the end?

I have no idea.

M. RANCOURT: Oui, absolument.

THE COURT: So it's on the file there, it's stamped and everything else?

M. RANCOURT: Absolument.

MR. DEARDEN: And he refused -- the Case Management Judge refused to schedule it because he was telling Mr. Rancourt: You got to seek Leave in Division Court.

So he -- he refused to deal with it because

there was no ...

At any rate, what he was telling him on July 27th, July 31st, wasn't an order.

But what if it was, Your Honour? What if it was?

THE COURT: Yes, well ---

MR. DEARDEN: There's a seven-day time limit, okay, which Mr. Rancourt is more than familiar with, okay, and that seven-day time limit there's urgency to it.

That Rule 62.02 doesn't only say you've got to -- file your motion, it's a "shall be served within seven days", it also -- the urgency is reflected in the third paragraph of that rule which says: You've got to set it down for the first available date. That shows you the urgency that you've got to get on with this stuff.

So he was informed on July 27th, informed again on July 31st and he seeks Leave on August the 8th.

So he's out of time on that basis alone.

I also submit, Your Honour, that it was improper for -- I'm sorry, Your Honour, did you have a question?

THE COURT: No, no. No, I missed ---

MR. DEARDEN: So I say that, the first point, there's no order in play here that you could get Leave on. It's a letter.

Secondly, if it is an order, if what was told to Mr. Rancourt on July 27th "that you're in the wrong court" ---

THE COURT: He's told he has no jurisdiction.

MR. DEARDEN: He's told he has no jurisdiction and he's out of time.

THE COURT: Are you saying that's a good decision?

MR. DEARDEN: It's trite ---

THE COURT: All right.

MR. DEARDEN: It's trite.

THE COURT: All right, so -- so the basis -- if the appeal was allowed, there'd be no issue that he didn't have jurisdiction.

MR. DEARDEN: It's trite.

THE COURT: All right.

MR. DEARDEN: Right.

THE COURT: All right.

MR. DEARDEN: But what is disconcerting, Your Honour, is we had one motion filed by Mr. Rancourt that has in play a Leave Application for two different judges on two different issues, two different matters.

It should have been two separate Motion Records, two separate Applications for Leave to Appeal but the outcome -- or the effect of that, of course, is that Justice Smith couldn't sit on that motion because he didn't file ---

THE COURT: That's why I'm here; right?

MR. DEARDEN: And that brings you here.

And that, to me, is really the strategic purpose behind just lumping in Justice Smith late because he knew the seven-day rule. That's why ...

And if all that doesn't sway Your Honour, we still come back to he's got to fulfil the test that's set out in 62.04(4) and he hasn't shown

any conflicting decisions. He hasn't shown that there's good reason ---

THE COURT: I've actually written a decision which says that I did not have jurisdiction to overturn the decision of another judge. It was just a passing thing I made because it's so well-known.

But that's -- that's the reality.

MR. DEARDEN: Well, I submit, Your Honour, that that decision of yours is correct.

THE COURT: Yes.

MR. DEARDEN: So those are my ---

THE COURT: It's buried in a Family case somewhere so you won't be citing the law.

MR. DEARDEN: Those are my ---

THE COURT: You can do that in Family.

MR. DEARDEN: --- my points, Your Honour, on ---

THE COURT: All right.

MR. DEARDEN: --- on the Bias Leave Application.

THE COURT: All right.

So now you're going to do the -- the ---

MR. DEARDEN: The September 6th ---

THE COURT: The September 6th ---

MR. DEARDEN: --- decision ---

THE COURT: --- decision, yes.

MR. DEARDEN: -- now that -- so we have a Leave Application with respect to Justice Smith's Reasons for Decision on the Refusals of the cross-examination of Joanne St. Lewis.

And my outline of argument, Your Honour, is -- there are nine matters involved in his proposed ---

THE COURT: You're going to walk me through them then? Okay.

MR. DEARDEN: I'm not walking you through them all but I am going to deal with that as the first point.

THE COURT: Well, I mean, yeah, I -- I've already indicated that getting Leave on a Refusal -- Refusal issues is ---

MR. DEARDEN: Next to impossible.

THE COURT: --- next to impossible because that's exactly what the rule is supposed to avoid.

MR. DEARDEN: Right.

THE COURT: So I ---

MR. DEARDEN: But there's -- there's a couple that I really want you ---

THE COURT: All right.

MR. DEARDEN: --- to be aware of; okay?

The second point is: there is no matter of such importance. And I just want to draw your attention to a decision ---

THE COURT: Yes.

MR. DEARDEN: --- of Justice Bellamy on what that means because it is meaningful.

And I was going to deal with the *audi alteram partem* allegations but I noted that Your Honour said to Mr. Rancourt that you've got it and ---

THE COURT: Yeah, I made a -- so I don't think we have to worry about it now.

MR. DEARDEN: --- only one. Well, it's the -- it's the so-called five questions that Justice Smith ruled on that weren't in play?

THE COURT: Yes.

MR. DEARDEN: All they were were context for the question that was in play and I'll show it to you in the Compendium.

THE COURT: All right, so ---

MR. DEARDEN: So, Your Honour, could you turn ---

THE COURT: --- through this.

MR. DEARDEN: Okay.

THE COURT: What Compendium do I have? The big one?

MR. DEARDEN: The big one.

THE COURT: All right.

MR. DEARDEN: The same ---

THE COURT: Do I need your Factum as well?

MR. DEARDEN: No.

THE COURT: No?

MR. DEARDEN: No. I don't think so.

THE COURT: All right.

MR. DEARDEN: Tab 10 -- you know, I want you to read my Factum but ---

THE COURT: No, I have already so, I mean, you know, but if you wanted this ...

MR. DEARDEN: Okay.

So at Tab 10, what I've done, Your Honour, is I've reproduced pages 11 to 16 of Mr. Rancourt's Factum. This is his section dealing with Justice Smith erred in applying the law.

THE COURT: So this is -- this is -- oh, it's in front of me already? This is his?

MR. DEARDEN: This is his Factum.

THE COURT: Okay, yeah, it's okay, you're just telling me. Very good.

MR. DEARDEN: In the Compendium, ---

THE COURT: Yes.

MR. DEARDEN: --- at Tab 10 ---

THE COURT: Yes.

MR. DEARDEN: --- I've extracted the parts of his
Factum ---

THE COURT: Right.

MR. DEARDEN: --- that deal with error in
applying the law.

THE COURT: All right.

MR. DEARDEN: If you look at paragraph 36, you
have a rather important admission by Mr.
Rancourt:

"Justice Smith correctly summarized the Law
of Maintenance and Champerty in paragraphs 10
to 12 of his decision ..."

THE COURT: Yes, and I tried to point out -- to
-- to Mr. Rancourt that the easiest way to get
there is somebody making a mistake on the law,
not applying the law to facts.

But, in any event ...

MR. DEARDEN: Correct. That's my submission.

THE COURT: Yeah.

MR. DEARDEN: That's my main submission on
this ---

THE COURT: Yes.

MR. DEARDEN: --- but if you look at the next
page, Your Honour, so paragraphs 38 ---

THE COURT: Yes.

MR. DEARDEN: --- of pages 12 to 16, you'll have
nine titles.

I've numbered them: 1, 2 ... like, what he's
underlined there as headings ---

THE COURT: Yes?

MR. DEARDEN: --- I've numbered 1 through 9.

THE COURT: Okay.

MR. DEARDEN: Okay?

THE COURT: You've numbered them. They're not numbered here.

MR. DEARDEN: They're not numbered here.

LA COUR: Okay.

M. RANCOURT: I've ---

THE COURT: So (1) is: Maintaining ...

MR. DEARDEN: Correct.

THE COURT: That's (1).

MR. DEARDEN: Correct.

THE COURT: Okay.

MR. DEARDEN: And -- so that -- those are nine matters to be dealt with in the proposed appeal.

THE COURT: Yes.

MR. DEARDEN: It's what you see on the next four pages.

All nine matters, Your Honour, all nine of them, state that:

"Justice Smith correctly held ...".

So if you wanted to look at paragraph 38(a):

"Justice Smith correctly held that there must not be an improper motive which motive will include ..."

et cetera. Every one of them starts like that; okay?

So he correctly held the legal principle that was in issue for that particular refusal and Mr. Rancourt's problem hence with the facts. Every one of the (b), okay, so you see that he goes

"(a), (b)" in each one of those.

In the subparagraph (b):

"... erred in applying this principle to the facts in the case ..."

Okay?

What this is, in my submission, Your Honour, is that Mr. Rancourt's disagreement with Justice Smith's findings that he's outlined on pages 12 to 16 is purely factual.

He doesn't agree with the outcome but disagreement with an outcome doesn't constitute a conflicting decision for the test to get Leave to Appeal.

He's admitting that the law that was relied on by Justice Smith is correct so there can't possibly be any conflicting decisions cited and, indeed, there are no conflicting decisions that you will be cited on these pages -- that you see cited on these pages, Your Honour.

THE COURT: Yes.

MR. DEARDEN: None.

THE COURT: I've got it with that aspect. Yes, all right.

MR. DEARDEN: Okay?

THE COURT: So he's right on the law. There's no conflicting decisions.

MR. DEARDEN: There can't be.

THE COURT: Yeah.

MR. DEARDEN: But nor does he cite any for the Court. Does Mr. Rancourt cite any.

THE COURT: No.

MR. DEARDEN: And I deal with this, Your Honour,

by the way, in our Factum at paragraphs 39 to 54.

THE COURT: Yes.

MR. DEARDEN: Now, the second one, the second one -- I'll give you an example of what he's challenging:

"Maintain litigants prior the intent to litigate."

So at paragraph 39 of the Factum, he says that:

"... where Justice Smith erred in applying this principle (inaudible) case was holding whether or not St. Lewis had any intent to litigate over blogs published by Rancourt before the blog's complaint were published is irrelevant regarding a 2008 blog post that made all the same criticisms of the Plaintiff as in the more recent 2008 blog post."

That's absolutely a correct finding, Your Honour. This libel action is about the University of Ottawa paying legal fees for two "house Negro" articles that the Defendant published in February and May of 2011. It has nothing to do with December 2008 as Justice Smith correctly held and each publication, of course, in libel law is a separate cause of action.

The actions that are in play, the articles that are in play in this libel action are in 2011 not 2008. But that shows you the kind of irrelevant questions that Mr. Rancourt asked and Justice Smith said were -- the refusal is upheld.

THE COURT: Yes.

MR. DEARDEN: As an example.

Now, I'll flip to number -- the sixth one

which is:

"Testing the Plaintiff's evidence about independent choice of counsel."

In that one, apparently, the error is -- well, just that it's irrelevant but, really, Justice Smith held that:

"... the answer was sufficient -- the question was sufficiently answered by Professor St. Lewis. The choice was solely hers as to who she was going to choose as counsel."

Again, it's factual. There's no legal conflicting decision in that. It's factual.

THE COURT: Yeah, it's just irrelevant.

Yes?

MR. DEARDEN: Now, if you go to the eighth one which is the next page:

"Nature of the Funding Agreement"

and I ask Your Honour if you can look at page 15 of Tab 10 of the Compendium. This is the actual submission you see in the Factum on this one then you could go to it.

THE COURT: Yes, I recall that they're all the actual submissions; aren't they, actually?

MR. DEARDEN: It's in his Factum ---

THE COURT: Yes.

MR. DEARDEN: --- yes ---

THE COURT: Yes.

MR. DEARDEN: --- but I need -- you know, I need to take you physically to these.

THE COURT: No, I'm -- I'm following along okay.

MR. DEARDEN: Okay.

No, I'm not suggesting you're not, Your

Honour, sorry.

THE COURT: Okay.

MR. DEARDEN: In the last -- so we've got (a) and (b) and then you see here that:

"... the University admitted it would pay without a cap is a contested fact and President Rock refused to answer if this 'without a cap' agreement continued today also the nature of the oral agreement reached is contradicted by the evidence of the Dean of Law. This would be Bruce Feldthusen. Justice Smith's decision excludes requested evidence."

Your Honour, you see that Mr. -- so he's making the allegation that the oral agreement reached is -- is contradicted by the evidence of the Dean of Law. So he cites Allan Rock at page 36 and then he cites Dean Feldthusen at page 22.

And I've reproduced, Your Honour, at Compendium Tab 11 ---

THE COURT: Yes?

MR. DEARDEN: --- what Allan Rock testified to; okay?

M. RANCOURT: Je ---

MR. DEARDEN: You see it at the bottom of the page ---

M. RANCOURT: J'ai une objection ici.

Je pense que ce matériau n'était pas le 'Motion Record'.

LA COUR: Oh, de toute manière, si c'est -- il s'agit d'une transcription, écoute, c'est ---

M. RANCOURT: D'accord.

LA COUR: Le fait que c'est pas là, bon bien, tanpis un peu.

M. RANCOURT: ... que je connaisse les arguments avant la dernière ---

LA COUR: Oui, mais si c'est ---

MR. DEARDEN: Your Honour?

LA COUR: Si c'est quelque chose qui ---

MR. DEARDEN: Your Honour, this is from his Factum.

THE COURT: Oh!

MR. DEARDEN: These -- this is his Factum.

THE COURT: No, but the transcription he's saying is ---

MR. DEARDEN: Yes, he's citing the transcript.

THE COURT: Oh, he's citing the transcript? Voilà.

MR. DEARDEN: Look at -- paragraph 45 of his Factum ---

LA COUR: Ah oui, donc ---

MR. DEARDEN: --- cites the transcript.

M. RANCOURT: Je le cite mais il est pas le ---

LA COUR: Non, mais ---

MR. DEARDEN: My Goodness!

M. RANCOURT: Ce que je veux dire ça me permettait ---

LA COUR: Non, mais soyez raisonnable. Si vous citez la chose, on tient compte que -- on croit au moins que vous avez déjà lu la chose. Donc, vous n'êtes pas -- c'est des questions de préjudice: Ah, ça ma pris par surprise.

C'est vous-même qui a cité quelque chose donc c'est une argumentation ---

M. RANCOURT: Oui.

LA COUR: --- assez faible.

M. RANCOURT: Oui, je comprends, c'est juste que

LA COUR: Oui, oui, mais c'est juste ---

M. RANCOURT: (inaudible)

LA COUR: Non, mais c'est juste -- c'est pas la
peine de ---

M. RANCOURT: D'accord.

LA COUR: --- et vous mettre debout pour quelque
chose comme ça parce que vous êtes sensé
connaître les choses que vous citez dans votre
propre ...

Mais, de toute manière, allez-y donc, y
disent -- I'm sorry, he's saying at the bottom of
the page there?

MR. DEARDEN: So Mr. Rancourt is submitting to
this Court that the evidence of Allan Rock about
the oral agreement reached -- this is paragraph
45 of -- in the Tab 10 Compendium -- is
contradicted by the evidence of the Dean of Law.

THE COURT: Okay.

MR. DEARDEN: And he -- so Allan Rock, at Tab 11,
you know, cites page 36 ---

THE COURT: Yes.

MR. DEARDEN: --- by Mr. Rancourt who said that:

"... you said you made that decision at the
time."

You said:

"Yes."

"Was there no cap established in terms of
funding?"

Answer:

"No. None."

Now, you go to Tab 12 and you have in the page 22 of Bruce Feldthusen's testimony in the cross-examination ---

THE COURT: Yes.

MR. DEARDEN: --- and on page 22, at Lines 17/18 ---

THE COURT: Hang on here, I'm losing my pages here. Page 29, 28, 22, yes, I've got it.

MR. DEARDEN: Twenty-two (22).

The Dean says:

"No decisions were actually made in my presence but I had a feeling that they would be forthcoming."

And then, if you turn to the next page which is page 28, Your Honour ---

THE COURT: Yes?

MR. DEARDEN: --- the Dean says to Mr. Rancourt:

"I'm vexed a little about one of my earlier answers. I'm sorry, do you mind if I go back"

And then, if you go to Line 13:

"I just feel I may have misled you inadvertently. I just wanted to straightened it out, that's all."

And if you flip the page that Mr. -- so Mr. Rancourt says:

"Mr. Feldthusen, is there something that you said that you think is wrong?"

Answer:

"It is. You know, I think that we did

5 actually leave that meeting with the
President with him saying that he would
support her in the litigation. The more I
think about it, the more I believe that's
right and I just don't want to mislead you.
Sorry."

THE COURT: Okay.

10 **MR. DEARDEN:** So you were missing page 29 from
the citations that were given in paragraph 45 of
Mr. Rancourt's Factum.

The ninth matter of the proposed appeal, Your
Honour ---

THE COURT: Yes?

15 **MR. DEARDEN:** --- is headed:

"Testing and maintaining employer's
interference with an ongoing litigation".

Okay?

THE COURT: Yes, whatever that means. In any
event.

20 **MR. DEARDEN:** Mr. Rancourt made submissions that
(a) -- this is paragraph 46 of his Factum.

THE COURT: Yes, yes.

MR. DEARDEN:

25 "A Defendant's expert report found in e-mail
of March 30th from Allan Rock to the
Plaintiff's counsel to be an authentic
electronic communication;

(b) as had the expert, Justice Smith found
the copy of the e-mail was forwarded to
counsel for St. Lewis on March 30th;

30 (c) the said e-mail shows Allan Rock
providing evidence to the Plaintiff for her

disclosures in the Champerty Motion;
(d) and refute the Defendant's question: Can
you undertake to instruct your counsel
providing all e-mail communications with
Allan Rock that are relevant to this
litigation?"

And this is where I want to tell you what really
happened, Your Honour.

THE COURT: M'hm.

MR. DEARDEN: Both Justice Smith and Justice
Beaudoin separately ruled that the so-called
expert Louis Béliveau, okay, failed the *Mohan*
criteria and they didn't accept him as an expert
anyway on the functionality of the Outlook
Calendar appointment.

Okay?

THE COURT: M'hm.

MR. DEARDEN: Here's what happened, Your Honour:
There's -- I'll try to find it in the Compendium
-- if you turn to Tab 7 of the Compendium ---

THE COURT: The ---

MR. DEARDEN: Tab 7 of the Compendium.

THE COURT: Yes.

MR. DEARDEN: You should see "Joanne St. Lewis"
and then there's an exhibit -- I'm not sure what
number that says -- anyway, you have "Joanne St.
Lewis" ---

THE COURT: Twelve of two (12 of 2) or something
like that.

MR. DEARDEN: Yes, something like "2".

Okay, you'll see about three inches down from
the top of page:

"Hi Joanne, can you print out a copy of this appointment for me off your computer, please?"

and it says it's from Allan Rock, sent March 30, 2012, to Richard Dearden and Allan Rock, for a meeting that's supposed to happen a year earlier; okay, April 15, 2011. Okay?

THE COURT: Yes.

MR. DEARDEN: There's no attachments here; okay?

First point, Mr. Rancourt says that Allan Rock was forwarding me information -- or documents. Totally false. Completely false.

Allan Rock, on the face of this document, doesn't forward anything and we're calling this particular document, Your Honour, an "Outlook Calendar appointment" because it's not an e-mail that Allan Rock ever sent.

And Joanne St. Lewis dealt with this extensively in -- in her cross-examination to explain what happened.

And I'm just going to point you to it, Your Honour. Tab 8 is the transcript of Joanne St. Lewis' cross-examination explaining what happens when you forward an e-mail directly from your Outlook Calendar, the appointment which she was doing to me, because I wanted to print it out to produce it.

And she explained that, when you forward an Outlook Calendar appointment directly from your Outlook -- from her -- your Outlook and it's opened by the Recipient and then the Recipient, me, puts:

5 "Hi Joanne, can you print out a copy of this
 appointment for me on your computer, please?"
and she testified that that's me writing her --
her to do that and that was her response ---

THE COURT: Yes.

MR. DEARDEN: --- that she forwarded it to me
instead of printing it off, I get imbedded in it.

10 On its face, it's absurd that Allan Rock
would be sending me an appointment for meeting
that happened a year prior to this e-mail -- this
appointment; right? It's an Outlook
functionality issue that was argued before
Justice Beaudoin who rejected Louis Béliveau's
so-called expert report and the same with Justice
15 Smith rejected Béliveau.

 And I'd ask if -- actually, at this point, to
go back to Justice Smith's decision which I have
at the first tab of the Compendium and he deals
with this Louis Béliveau affidavit within
20 paragraph ---

THE COURT: In his decision.

MR. DEARDEN: In this decision, at paragraphs 32
to 34.

25 So it's at Tab 1 of the Compendium and this
is the issue that you're dealing with the matter
we're dealing now ---

THE COURT: Which -- hang on, oh, as ---

MR. DEARDEN: There's the Tab 1, September 6th
decision.

30 And it's worth reading this, Your Honour.

THE COURT: Yes.

MR. DEARDEN: So Justice Smith holds:

5 "Rancourt submits that his alleged expert witness affidavit should be admitted related to an Outlook record of a meeting held on April 15th, 2011. He seeks relevant e-mail communication between Allan Rock and Plaintiff's counsel related to a meeting held on April 15, 2011 between Allan Rock, Dean Feldthusen and St. Lewis. The copy of the e-mail was forwarded to counsel for St. Lewis on March 30, 2012. St. Lewis was not a recipient of the March Outlook Calendar appointment and Allan Rock has already answered this question in detail.

15 Rancourt relies on the expert opinion of Mr. Louis Béliveau, a lawyer in New Brunswick who has graduated as an Engineer. Béliveau has provided his opinion of the March 30th e-mail as a communication between Allan Rock and counsel for the Plaintiff.

20 I find that Béliveau's opinion does not meet the requirements of *R. v. Mohan* as he lacks any special qualifications on how appointments recorded in Outlook are forwarded by e-mail at a subsequent date.

25 In addition, his opinion does not meet the requirements of relevancy to an issue in the Champerty Motion and it's also not necessary to assist the Court in deciding the issues in this Refusals Motion or in the Champerty Motion as the University has admitted it's agreed to pay for St. Lewis' legal fees to pursue her libel action against Mr. Rancourt.

30

The e-mail has been produced enclosing an Outlook scheduled meeting on the Outlook software program which occurred on April 15, 2011.

All three of the persons present at the meeting, St. Lewis, Dean Feldthusen and President Rock, have been cross-examined concerning this meeting. Therefore, I fail to see the relevance of any further answers to this question that can be given by St. Lewis on whether the Outlook record indicates that Allan Rock sent an e-mail to counsel for the Plaintiff."

So he hasn't found that he -- that Allan Rock sent me that e-mail, Your Honour, he's saying:

" ... I fail to see the relevance ..."

of it and he rejects the so-called expert report on that issue.

THE COURT: But he's made a decision there.

MR. DEARDEN: He's made a decision:

"... in these circumstances, an expert report is not necessary as Allan Rock has already been questioned on this issue."

What he's saying there, Your Honour, is he's -- Rock's been questioned, St. Lewis has been questioned and the Dean has been questioned about the April 15th meeting that I was never at. That's the issue. That's the issue.

So, Your Honour -- and the bottom line, Your Honour, it's all factual. This is all factual. It's not subject of Leave to Appeal.

The one thing I can tell you though and I

5 repeat: to have it said that it shows -- this is paragraph 46 (c) of the Factum -- but that e-mail shows Allan Rock providing evidence to the Plaintiff for her disclosures in the Champerty Motion is categorically false. It's just categorically false.

10 So that gives you the drift of the matters that he has in play, Your Honour. I said to you there's no conflicting decisions so it doesn't get that ground through the test. The next branch is: Is there a good reason or a general legal importance?

And I did tell you I'd ask you to look at ---

15 **THE COURT:** Yes.

MR. DEARDEN: --- Justice Bellamy's decision which you will find in the Compendium at Tab 5.

And Justice Bellamy, in the first paragraph:

"The test is onerous ..."

20 and then, paragraph 3, she deals with the second branch of the test where it raises matters of general importance which she rejects in that case but -- and says it's only of importance to the parties.

25 But here's -- the last sentence is what's important in terms of the law governing meeting the second branch of the test:

30 "In any event, the issues raised lacked general legal importance. They do not transcend the immediate interest of the specific facts of the case. They do not raise issues of general public interest. And then, the final analysis, they have very

little jurisprudential value."

Your Honour, you could repeat that sentence in ---

THE COURT: I'm pretty sure I've seen it somewhere else. I mean, that's what I was basically saying is that, once you get into the facts, it's kind of -- it's kind of challenging.

MR. DEARDEN: There's no issue of general legal importance at play, there's no issue of general public interest at play.

And, Your Honour, my last point is going to be over the submissions of Mr. Rancourt about a violation of the *audi alteram partem* rule and ---

THE COURT: Fire away.

I mean, he says -- he says he takes it from I guess it's superficial answers. I'm not quite sure but he's ---

MR. DEARDEN: Just one point, Your Honour; okay?

You have, in Mr. Rancourt's submission he was giving you, in paragraph 28 of his Factum, he was saying: You see, he's actually answered questions that weren't even in the Refusals.

And Tab 13, Your Honour, what we've done at Tab 13 of the Compendium as a response to paragraph 28 of the Factum ---

THE COURT: Yes?

MR. DEARDEN: --- that somehow Justice Smith was out of it and didn't read Mr. Rancourt's submissions.

THE COURT: What's the number in paragraph 28, just out of curiosity?

MR. DEARDEN: Paragraph 28 of the Factum, of Mr.

Rancourt's Factum.

THE COURT: Yes, but which number? You said: 1, 2, 3, 4, 5, 6, 7, 8, 9". I've actually done that, you know? Anyway.

MR. DEARDEN: Oh, no, now, we're in -- now, we're in the *audi alteram* ---

THE COURT: Oh, right. We're right out of the numbers. Yes, I'm sorry. Yes, Yes.

MR. DEARDEN: We're in the *audi alteram*.

THE COURT: I'm sorry, yes.

MR. DEARDEN: And -- and so -- so Mr. Rancourt takes issue with the fact that Justice Smith referred to questions 135, 192, 195, 237 and 242.

THE COURT: Which he just put in front of him for some reason; of course, background.

MR. DEARDEN: He just put it -- he put them in -- they're backgrounds, yeah.

THE COURT: Yeah.

MR. DEARDEN: Exactly.

He's not -- he was with it. Totally with it. This is context to go with the question that he was making a decision on.

Nothing wrong with what he did whatsoever. Nothing.

So, Your Honour, that's -- that's -- subject to if you have any questions, that's my submissions ---

THE COURT: No, I think that's ---

MR. DEARDEN: --- on the September 6th Leave which should be dismissed with costs and because neither branch of the test is met.

THE COURT: Okay.

So voilà. Donc, vous avez bien le temps de répondre, de faire une réplique.

M. RANCOURT: J'ai -- il y a beaucoup de choses qui ont été dites ---

LA COUR: Oui.

M. RANCOURT: --- qui sont fausses parce que on -- on dit une partie des -- on lit une partie des choses mais pas l'autre partie qui -- qui, justement, montre ce que, moi, j'essayais d'argumenter.

Il y a beaucoup beaucoup de choses ici. J'ai pris des notes mais je veux avoir le temps de bien répondre et, donc, voici ---

LA COUR: Mais le problème de base, comme je vous ai déjà dit, que c'est la nature des -- si vous regardez celui du 16 -- 6 septembre, la décision de Smith, c'est -- les avocats ne plaidera pas -- ne plaideront pas ce genre de cause, jamais, dans -- pour un appel.

Ça se fait pas là.

M. RANCOURT: C'est-à-dire que ---

LA COUR: Je sais pas si vous comprenez bien ce que je dis là mais ça c'est peut-être votre manque d'expérience mais c'est juste -- c'est juste les règles sont là pour empêcher -- on veut que les choses soient -- on veut pas que tout tout soit embrouillé dans une -- dans de la pagaille avec des décision interlocutoires.

M. RANCOURT: Je comprends, monsieur le juge.

LA COUR: Donc, la règle est très forte.

M. RANCOURT: Mais ---

LA COUR: Si on commence à permettre des décision

refusant, bien, on finirait -- ça finirait
jamais. Donc, c'est ça la réalité.

M. RANCOURT: Mais laissez-moi dire, par rapport

LA COUR: Oui?

M. RANCOURT: --- si on commence avec la dernière
chose, c'est-à-dire la décision du Juge Smith,

LA COUR: Oui?

M. RANCOURT: --- j'aimerais faire le point
suivant: Monsieur Dearden a beaucoup insisté sur
le fait c'était une question de faits.

Mais c'est pas une question de faits, moi, ce
que j'ai dit c'est que j'ai utilisé le mot en
anglais « erred in applying the law ».

LA COUR: Oui.

M. RANCOURT: Je ne conteste pas les faits, je
dis que les faits sont là mais il n'a pas pris le
droit qu'il avait cité.

Je sais pas si -- je ne peux pas me prononcer
s'il a compris ou pas mais il a pas appliqué à
ces faits-là de façon correcte.

Donc, c'est une erreur de droit. Je dis que
c'est une erreur de droit parce que les faits ne
sont pas contestés. Les faits -- si on prend les
faits comme ça, il n'a pas appliqué le principe

LA COUR: Croyez-moi, c'est compliqué.

Nous aimons -- nous -- ce qu'on cherche c'est
une erreur du droit où on a un principe qui --
qu'il a raté; o.k.? Ça c'est le genre de chose
qu'on cherche et ça c'est pour voir si on cherche

-- si on va voir -- ça c'est comment il peut y avoir une erreur de -- lorsque les faits et le droit c'est -- c'est mélangé, 'mixed fact and law'.

Et ça c'est -- ça c'est compliqué là, juste pour vous dire que -- on est -- on est dans le domaine du pouvoir discrétionnaire du juge et, même en appel, sans avoir parlé de -- sans avoir parlé d'avoir la permission d'en parler, ça c'est très difficile; o.k.? Juste pour vous ---

M. RANCOURT: Oui.

LA COUR: --- pour comprendre; o.k.?

M. RANCOURT: Mais ---

LA COUR: Vous n'êtes pas avocat mais, croyez-moi, ça c'est carrément -- c'est compliqué.

M. RANCOURT: Un dernier mot de ma part ---

LA COUR: Oui?

M. RANCOURT: --- sur cette question d'abord ---

LA COUR: Oui.

M. RANCOURT: Voici: Je pense que les faits, si on les regarde, c'est flagrant à quel point, étant donné la jurisprudence sur maintenance et champartie, ces faits-là étaient pertinents.

Donc, l'erreur est grosse parce que c'est flagrant.

Et je vais vous pointer vers les autorités sur maintenance et champartie qui montrent que les critères sont clairement établis et c'est vraiment une erreur là époustouflante dans le sens que une autorité, par exemple, va dire: la capacité à la personne qui est maintenue de payer est un point important qu'on a considéré et

monsieur le juge dit, voilà, la capacité a été surmontée mais c'est pas pertinent, et cetera.

Point sur point, ce sont des choses qui sont établies dans la jurisprudence sur lesquelles ---

LA COUR: Oui.

M. RANCOURT: --- il a dit le contraire ---

LA COUR: Mais vous -- il travaille avec les faits.

M. RANCOURT: Donc ---

LA COUR: Il travaille avec les faits.

Et comme la Madame a dit -- le Juge Bellamy a tenté d'expliquer ça c'est pas ce qu'une cour d'appel fait. Une cour d'appel et toutes les cours d'appel, ils travaillent avec le droit, les principes. Le domaine des faits, ça c'est pour les juges de première instance; o.k.? Ça, ça sera tout réglé à l'avance.

Mais qu'est-ce qu'on fait, eux, y font des -- des 'findings of fact' et, par après, bon bien, on applique le droit et c'est le droit pas tout le monde regarde en appel.

M. RANCOURT: C'est ---

LA COUR: Donc, juste croyez-moi que ---

M. RANCOURT: D'accord.

LA COUR: --- c'est comme frappé ça sur le mur là. C'est ---

M. RANCOURT: J'entends ce que vous dites ---

LA COUR: Bonne chance.

M. RANCOURT: --- et je veux simplement finir avec ma position ---

LA COUR: Oui.

M. RANCOURT: --- qui est: c'était ---

LA COUR: Je comprends votre position.

M. RANCOURT: --- des erreurs de droit.

LA COUR: Des erreurs de droit où ---

M. RANCOURT: D'accord.

LA COUR: C'est pas des erreurs de droit, c'est des erreurs d'application du droit, donc, c'est une question de 'mixed fact and law' et, donc, ça c'est compliqué là.

M. RANCOURT: D'accord.

LA COUR: O.k.?

M. RANCOURT: Donc, ---

LA COUR: Il faut normalement discrétion, pouvoir discrétionnaire d'un juge, de travailler avec ça et, donc, c'est le -- la Cour d'Appel ne veut pas avoir.

Y veut pas avoir ce genre de causes parce que ça finirait jamais.

M. RANCOURT: Je veux juste signaler deux affaires qui montrent à quel point les propos de Monsieur Dearden étaient pas toujours complètement corrects.

Par exemple, Monsieur Dearden a dit:

« ... not an e-mail that Allan Rock ever sent ... »

Ce n'est pas un vrai e-mail, c'est une affaire de Outlook, et cetera.

Par contre, dans la décision du Juge Smith lui-même, si on va à la décision du Juge Smith lui-même qui est l'onglet ---

LA COUR: Cinq (5), je pense.

M. RANCOURT: --- 2, c'est l'onglet 2 dans mon --

-

LA COUR: Bien, moi, j'ai -- ah, c'est pas -- de toute manière, vous avez raison.

M. RANCOURT: D'accord, vous l'avez devant vous?

LA COUR: Non, j'ai pas. C'est quel?

What number is it again in your ---

M. RANCOURT: Donc, moi, je suis dans mon ---

THE COURT: Yeah, but it's easier for me. I know it's here in this -- where do we find Smith? Was he -- like, he was number 1? Justice Smith?

Yes, yes, okay, number 1. Yes, in any event.

M. RANCOURT: Donc ---

LA COUR: Quelle page?

M. RANCOURT: --- si vous avez la décision du Juge Smith qui est datée -- qui a été relâchée le 6 septembre; n'est-ce pas?

LA COUR: Oui, je l'ai.

M. RANCOURT: O.k.

Donc, là, on va au paragraphe ---

LA COUR: Cinquante-deux (52).

M. RANCOURT: Exactement.

LA COUR: Voilà.

M. RANCOURT: Et ça dit, dans le milieu du paragraphe:

« ... a copy of the e-mail was forwarded to counsel for St. Lewis on March 30th, 2012.”

C'est très clair, le Juge Smith a compris mes arguments et la présentation que j'ai donnée et il a conclu que ---

MR. DEARDEN: No, Your Honour ---

M. RANCOURT: --- qu'un courriel a été envoyé.

MR. DEARDEN: Your Honour, I have to object.

Your Honour, he's not ---

M. RANCOURT: Et pour ---

MR. DEARDEN: --- he's not taking this in context because paragraph 34 clearly says:

"Therefore, I fail to see the relevance of any further answers to this question that he be given by St. Lewis on whether the Outlook record indicates that Allan Rock sent an e-mail to counsel for the Plaintiff."

M. RANCOURT: Oui, donc, ---

MR. DEARDEN: He didn't make a finding that it was forwarded ---

M. RANCOURT: Et là, il y a une interruption ---

MR. DEARDEN: --- because he clearly understood ---

M. RANCOURT: Je m'objecte à cette interruption.

MR. DEARDEN: --- this was an Outlook functionality and the expert report was rejected on the point.

LA COUR: Oui.

M. RANCOURT: Donc, il a dit que mon expert n'était pas un bon expert et il a conclu que ce courriel avait été envoyé.

Les deux choses ne sont pas contradictoires. Il y avait des évidences devant lui et il a conclu:

« ... a copy of the e-mail was forwarded to counsel for St. Lewis on March 30th. St. Lewis was not a recipient of this ..."

et cetera.

Il a conclu ça. Ça c'est juste un illustration de ce dont je parle.

Deuxième illustration qui est très

importante.

LA COUR: Oui?

M. RANCOURT: Ah, il y en a -- il y a tellement pour répondre mais, comme vous dites, o.k.

Ah, ça c'est important: Juste pour montrer à quel point il y a un problème ici dans la façon que les arguments sont présentés par mes amis, Monsieur Dearden a affirmé que la décision -- la lettre du Juge Smith avait été émise le 31 juillet et que j'avais déposé ma motion pour faire appel le 8 août.

Il a dit il y a sept jours donc le 'deadline' est dépassé.

C'est complètement faux. La règle est très claire et j'ai la règle ici avec moi. La règle exclut les weekends et les jours fériés. C'est la règle 3.0(1). Il y a aucune contradiction.

J'ai -- j'ai ici pour vous une copie de cette règle.

MR. DEARDEN: Your Honour, you know my submissions to the July 27th, he ruled he didn't have jurisdiction.

THE COURT: Yes.

MR. DEARDEN: You've got the transcript there.

M. RANCOURT: Donc, Monsieur Dearden a dit et je l'ai retenu, il a dit -- et même c'est dans son factum. Le même énoncé est dans son factum.

Si vous regardez le factum de Monsieur Dearden, ---

LA COUR: Oui?

M. RANCOURT: --- au paragraphe 18 de cette cause, dans son factum ---

LA COUR: Oui, attends une minute. S'il vous plaît, attendez, s'il vous plaît?

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: J'ai du mal moi-même à trouver son factum.

THE COURT:

« The Court should ask itself whether the decision is open? »

Ça c'est 18.

M. RANCOURT: Non, je parle du factum pour -- un des deux factum ---

LA COUR: Mais ça c'est peut-être pour l'autre; hein? Excusez-moi.

M. RANCOURT: Oui. Oui.

LA COUR: O.k.

Leave to Appeal -- Smith -- 31. O.k., excusez-moi. O.k. Pardon.

M. RANCOURT: Le paragraphe 18, je crois? Oui.

LA COUR: O.k., ça dit le 31 juillet là.

M. RANCOURT: Alors, au paragraphe 18, il dit:

« The Defendant Rancourt knew he was out of time in seeking leave to appeal Justice Smith's July 31st letter on August 8th. »

LA COUR: Et voilà.

M. RANCOURT: C'est complètement ---

LA COUR: Touché!

M. RANCOURT: C'est aberrant; n'est-ce pas?

LA COUR: Oui.

M. RANCOURT: O.k.

LA COUR: Mais il a aussi dit -- je pense que ça c'est une erreur, il voulait dire le « 27 ».

M. RANCOURT: Non.

LA COUR: He meant le 27 parce que ça ---

M. RANCOURT: Non, la lettre était du 31, monsieur le juge.

LA COUR: Oui.

M. RANCOURT: La lettre était du 31, c'est la lettre de décision qui est en appel. Il a voulu dire ça, il a dit ça et c'est faux.

LA COUR: Vous avez raison.

M. RANCOURT: Et ---

LA COUR: Il devrait faire ses excuses auprès de vous là.

M. RANCOURT: Merci. Peut-être qu'il veut les faire maintenant?

LA COUR: Non. Allez-y là.

M. RANCOURT: Écoutez, monsieur le juge, ---

LA COUR: Je pense qu'il y a assez de problèmes dans cette cause.

M. RANCOURT: Ça va plus loin que ça.

Monsieur Doody a fait la même chose. Si vous regardez le factum de Monsieur Doody, au paragraphe 71, il dit explicitement la même chose.

LA COUR: C'est du 'plagiarism' donc.

M. RANCOURT: Bien, c'est essayer d'induire la Cour en erreur, je pense, parce que ces avocats qui ont de l'expérience connaissent les règles.

LA COUR: Le juge les connaît un peu aussi, de temps à autres si ils veulent faire ça mais, de toute manière ---

M. RANCOURT: Ça c'est un point.

LA COUR: Bon.

MR. DEARDEN: But he hasn't addressed July 27th

which would put him out of time.

M. RANCOURT: Alors, pour -- par rapport ---

MR. DEARDEN: He hasn't addressed that.

LA COUR: Oui, mais ---

M. RANCOURT: Non, mais j'y arrive. J'y arrive, monsieur le juge.

LA COUR: Oui.

M. RANCOURT: J'ai juste besoin du temps. Je vais -- je veux montrer à quel point tout ce qu'ils ont dit c'est -- c'est faux.

Alors, regardez, par rapport -- d'abord, toute la question de la date -- du temps limite, j'ai préparé quelque chose en réponse à ça. Toute la question du temps limite est décrit en détail dans mon affidavit.

Alors, j'aimerais qu'on aille dans l'affidavit de la motion.

LA COUR: Vous savez ---

M. RANCOURT: Vous voulez pas?

LA COUR: Non, c'est que, moi, je pense pas que -- de toute manière, c'est une question de temps pour quelqu'un.

La question à poser c'est: Pourquoi ils ont pas mentionné le préjudice causé par manquement du délai et, voilà, c'est ça qui est souvent la question de base dans ce genre de choses.

Donc, moi, je pense que vous devriez passer à une autre question. C'est ça, o.k.?

M. RANCOURT: Vous dites que, par rapport à la limite de temps, il y a pas de problème?

LA COUR: Je pense que, selon ce que je peux voir ---

M. RANCOURT: Parce que ---

LA COUR: --- je comprends bien votre situation, oui, et de toute manière c'est pas dans deux jours ou trois jours qu'on appelle ce genre de chose.

M. RANCOURT: Donnez-moi une ---

LA COUR: Et vous n'êtes pas *Westinghouse* non plus là.

M. RANCOURT: Donnez-moi une seconde. Il y a quelque chose ---

LA COUR: Oui.

M. RANCOURT: --- de très important ici par rapport au temps.

Je sais -- le problème c'est que Monsieur Doody a affirmé qu'il y avait -- que toutes les décisions par rapport à ses clients avaient été prises le 20 juin. C'est complètement faux.

Il y avait plein de décisions qui se -- qui se rattachaient à ses clients à lui qui n'ont pas été prises le 20 juin et qui ont été prises uniquement dans les raisons du 2 août de Juge Beaudoin.

C'est très important cette question-là. Et je peux le démontrer ---

LA COUR: Ça c'est une autre question où c'est -- il me semble qu'on a des décisions qui ont été prises le 20 juin; o.k.? Il y avait quelques décisions qui ---

M. RANCOURT: Il y en avait qui avaient été prises le 20 ---

LA COUR: Ça c'est tout ce qu'il dit. Lui était pas là, donc, pour cette raison, son travail à

lui s'est terminé et il était pas là le 24 parce que, s'il croyait qu'il avait un rôle à jouer, il aurait été là. C'est aussi simple que ça.

M. RANCOURT: Mais il se trompait parce qu'il y avait plein de questions qui -- qui se rattachaient à ses clients qui n'ont pas été ---

LA COUR: Mais c'est un -- c'est un avocat qui je pense est en mesure de déterminer où on a besoin de ses services et non là.

M. RANCOURT: Alors ---

MR. DOODY: Your Honour, Mr. Rancourt just said that « he should have been there ».

Justice Beaudoin -- and I -- it's in the transcript, on the record, in this hearing today and I read it, Justice Beaudoin said to Mr. Rancourt: Mr. Doody won't be here on the 24th but it doesn't matter because his matters are over.

THE COURT: Ah bon.

MR. DOODY: And that's what he said ---

M. RANCOURT: Je -- je me souviens pas de ça.

MR. DOODY: --- in the record ---

M. RANCOURT: Mais je me souviens ---

LA COUR: De toute manière, c'est - c'est pas important; o.k.?

M. RANCOURT: O.k.

LA COUR: Si Maître Doody est là.

MR. DOODY: Well, this -- no, but, Your Honour, what ---

THE COURT: No, I understand ---

MR. DOODY: --- what's important -- no, just -- and I apologize.

THE COURT: I've already made up for your situation. I've already indicated, Mr. Doody, that I'm sure you would know that if you had to be there; okay?

I don't know what else I can say.

MR. DOODY: No, but the point is my ---

THE COURT: You've been around for a while.

MR. DOODY: Mr. Rancourt is trying to skate away from the clear point that he sandbagged me and he sandbagged Mr. Dearden and, with respect, he sandbagged the Court on the 24th of July, knowing I wouldn't be there, without notice ---

THE COURT: And I'm trying to -- I'm trying to deal with this matter at this point in time, at least, with respect to the facts.

There may be another time when you can make those submissions in terms of, you know, how -- how -- it's been out or something along that line but I'm not -- for what I'm doing now, it's -- I just want to sort of get sort of the basic facts that everybody would decide on and the side shows are things that sometimes you bring up on other occasions.

It's not that they're totally irrelevant but I'm just saying I'm not going to consider them in my case, that I don't think I'm in a position to do it because I -- I don't have the base to do it; all right?

But that doesn't mean that you can't talk about this at a later time.

But in terms of -- I said -- I said that you were that if anybody knew whether he should be

there, it's Mr. Doody. I do respect him that much and you should too. He's been around for a long time and he's a very competent counsel.

M. RANCOURT: Avec respect, monsieur le juge, ---

LA COUR: Et, en fin de compte -- en fin de compte, il m'a dit que Beaudoin a dit « pas besoin de lui » donc c'est -- donc, il fait confiance en le juge.

Mais allez-y, ça c'est -- c'est un point mineur qui ---

M. RANCOURT: Oui, oui, d'accord.

LA COUR: Rien à faire avec le fond du problème.

M. RANCOURT: D'accord, vous avez raison.

O.k., il y a eu un point où Monsieur -- Monsieur Dearden argumente que mon affidavit n'est pas admissible. Je veux -- mon affidavit dans la motion principale d'aujourd'hui n'est pas admissible. Il a mis ça dans son factum, il l'a mentionné encore aujourd'hui.

LA COUR: Il pousse pas.

M. RANCOURT: Il le pousse pas.

LA COUR: Oui.

M. RANCOURT: Mais je veux simplement dire que ce point-là est une aberration parce que -- pour la raison suivante: Quand on fait une demande de crainte raisonnable de partialité ---

LA COUR: Oui, mais normalement il faut ---

M. RANCOURT: --- on le dépose après ---

LA COUR: --- il faut demander permission du Tribunal et bla bla bla afin de pouvoir déposer des choses. Voilà.

Il y a des règles qu'on suit et, donc, c'est

-- c'est un peu ça, je pense. J'ai pas tout à fait compris -- saisi.

Mais c'est pas -- c'est pas une question du fond. C'est pas quelque chose ---

M. RANCOURT: D'accord.

LA COUR: Vous devriez pas vous tracasser ---

M. RANCOURT: Mon affidavit -- vous acceptez mon affidavit?

LA COUR: Oui, oui.

M. RANCOURT: Merci.

LA COUR: J'accepte tout ce qui est là-dedans là.

M. RANCOURT: Merci. Alors, ça c'est réglé.

Et maintenant, je vais -- je peux conclure comme suit: Nous avons pas eu le temps aujourd'hui de regarder les pièces d'évidence clés par rapport à crainte raisonnable de partialité. Et, par exemple, le contrat avec l'Université entre le Juge Beaudoin et l'Université.

Je pense que ça serait important de regarder ces documents ---

LA COUR: Vous -- vous me -- c'est la lettre que vous allez ---

M. RANCOURT: Oui.

LA COUR: Vous allez indiquer la pièce que je devrai regarder et les pages; o.k.?

Et je vous garantis que je regarderai ces -- ces choses-là et j'aimerais recevoir ça dedans une -- le délai d'une semaine; hein? Je ne veux pas que ça traîne. Vous allez me faire expédier ça assez vite, hein, cette lettre?

M. RANCOURT: Le plus vite possible, monsieur le

juge.

LA COUR: Voilà, o.k.

M. RANCOURT: Mais je dois dire que j'ai des choses ---

LA COUR: Oui, oui.

Mais c'est juste les pièces et les pages; o.k.? Moi, je vais regarder les choses et je vais lire les pages. C'est ça.

M. RANCOURT: Oui.

LA COUR: Je vais faire ça.

MR. DOODY: Sorry, this is dealing with which issue, Your Honour?

THE COURT: He says he wants to -- I should have looked at some of the exhibits and he wants to take me through that now and I'm saying to him -- et tout -- il faut pas me faire expédier quelque chose sans faire -- en envoyer une copie ---

M. RANCOURT: Ah, bien sûr.

LA COUR: --- aux avocats. O.k.

So he's just going to send me: Here's the exhibit, here are the pages to read. That's it.

MR. DOODY: With respect to the -- Mr. Dearden's issue or with respect to the ---

THE COURT: I have -- I have no idea.

I mean, if they're in the record and he wants me to look at them and because we are short on time, I'm saying I'm going -- I'm going to give him that courtesy.

M. RANCOURT: Merci.

MR. DEARDEN: Your Honour, may I ask you to set the date as November 21st that he'll provide you that information because you recall ---

THE COURT: Yes.

MR. DEARDEN: --- because you have the champerty motions scheduled for ---

THE COURT: Yes.

MR. DEARDEN: --- December 13th in the hope that you'll ---

LA COUR: Est-ce que c'est faisable pour le 21 novembre?

M. RANCOURT: Attendez, je regarde mon horaire.

LA COUR: Ça c'est quoi? Ça c'est?

MR. DEARDEN: It's a Wednesday.

THE COURT: Wednesday.

MR. DEARDEN: I mean today is ---

THE COURT: Friday.

LA COUR: Le 23, date limite.

Date limite, le 23. De toute manière, moi, je ne serai pas ici la semaine prochaine, donc, c'est ça.

M. RANCOURT: Le 23.

LA COUR: Oui, le 23. The 23rd of November.

MR. DEARDEN: So it is.

THE COURT: Yeah.

M. RANCOURT: Oui, le 23, date limite.

LA COUR: Moi, je serai pas ici pour les regarder de toute manière. Oui, c'est ça la réalité là.

M. RANCOURT: Merci.

LA COUR: O.k. Pas de quoi.

M. RANCOURT: Donc, -- donc, ça c'est important de signaler que les document de preuve essentielle n'ont même pas été regardés parce que ---

LA COUR: Je vais les regarder et, moi, je vais

faire la connexion s'il faut le faire; o.k.?

M. RANCOURT: D'accord.

LA COUR: Le rapport, disons.

M. RANCOURT: Et donc -- et donc, étant donné ---

LA COUR: Et ces documents sont importants; o.k.?

M. RANCOURT: Oui.

LA COUR: Donc, je souligne que je vais sûrement lire -- regarder ces -- les pièces m'intéressent toujours.

M. RANCOURT: Oui.

LA COUR: O.k.?

M. RANCOURT: Parce que c'est une situation.

LA COUR: Voilà.

M. RANCOURT: Il faut -- il faut mettre de l'emphasis là-dessus, c'est une situation où il y avait un contrat qui implique de l'argent entre ---

LA COUR: Et je vais lire les pièces et les pages que vous signalez; o.k.?

M. RANCOURT: Merci.

LA COUR: Ça c'est -- je vous fais cette promesse.

M. RANCOURT: Donc, étant donné cette situation ---

LA COUR: Oui?

M. RANCOURT: --- où il y avait une pièce physique avec le nom d'une personne auquel émotionnellement tient le Juge Beaudoin, un contrat qui implique de l'argent signé par le Juge Beaudoin en même temps qu'il y a une action qui implique l'Université d'Ottawa, la Plaignante dans la Faculté où est la bourse qui est nommée

au nom du fils du Juge ---

LA COUR: Non, non, j'ai compris votre argumentation, oui.

M. RANCOURT: Tout ça est en même temps.

LA COUR: J'ai compris votre argumentation.

M. RANCOURT: Je pense que c'est frappant à quel point il y a une crainte raisonnable ici d'une personne raisonnable.

Ici, je veux insister sur le fait et nous avons lu le compte-rendu ce matin ensemble. Il n'y a eu aucune décision par le Juge Beaudoin par rapport à crainte raisonnable de partialité, il y a eu uniquement une décision sur de ne pas ajourner ce jour-là et, ensuite, il s'est récusé pour des raisons autres ---

LA COUR: Mais vous répétez.

M. RANCOURT: Oui.

LA COUR: Je comprends bien, moi, je devrai pencher sur cette transcription et décider exactement ---

M. RANCOURT: Oui.

LA COUR: --- dans le contexte et je commence à avoir une bonne idée du contexte.

Bon, mais ---

M. RANCOURT: Merci.

LA COUR: --- c'est -- il faudrait peut-être -- je sais que c'est une décision importante que je devrai prendre sur une interprétation des faits.

M. RANCOURT: Et le -- mes amis ont insisté sur le fait que je n'ai pas critiqué des erreurs de droit dans les décisions elles-mêmes.

Et je veux réitérer que la raison que je n'ai

pas fait ça c'est pas parce que j'en n'ai pas de problème avec les décisions au niveau du droit, c'est parce que tout mon argument est axé sur crainte raisonnable de partialité ---

LA COUR: Une décision stratégique à faire.

M. RANCOURT: Exactement.

LA COUR: Ce qu'on fait tout le temps lorsqu'on va en appel parce qu'on sait très bien que pour le juge, normalement, on a juste un coup et si on ajoute trop de coups, on commence à faiblir nos -- nos argumentations.

C'est connu ---

M. RANCOURT: Et l'autre ---

LA COUR: --- pour tout avocat qui 'argue' des points d'appel.

M. RANCOURT: Et peut-être un de mes derniers points ---

LA COUR: Oui?

M. RANCOURT: --- c'est le suivant: C'est que mes amis ont suggéré que c'était une question qui impliquait juste les parties mais que c'était pas d'intérêt plus général.

Là, je dois dire que c'est complètement à côté de la plaque parce que la Cour Suprême a dit de façon répétée: Quand il s'agit de crainte raisonnable de partialité, c'est quelque chose qui implique tout le système judiciaire. C'est quelque chose qui a des grandes répercussions dans la société. C'est quelque chose de nécessairement important qui va au-delà des intérêts des parties et, donc, on doit le regarder attentivement.

Ça c'est la Cour Suprême qui l'a dit de façon répétée.

Donc, je voulais, donc, contrer leur position

LA COUR: Vous répétez ça mais je comprends bien ce que vous dites là.

M. RANCOURT: Merci.

LA COUR: Oui.

M. RANCOURT: Et je veux maintenant prendre quelques secondes pour passer en survol les notes que j'avais fait, si vous permettez.

LA COUR: Oui, allez-y.

M. RANCOURT: O.k. Je vais juste regarder les points -- uniquement les points les plus importants que je peux repérer.

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT: Oui, il y a un point important.

Alors, Monsieur -- je sais pas le temps -- ah, il y a encore 10 minutes alors je vais prendre un peu de temps pour ce point qui est quand même un point très important.

Monsieur Doody a beaucoup ---

LA COUR: Je dis un peu.

M. RANCOURT: Est-ce que je ---

LA COUR: Oui. Non, mais allez-y.

M. RANCOURT: Est-ce que c'est correct?

LA COUR: Oui. Oui, oui.

M. RANCOURT: Merci.

LA COUR: Oui.

M. RANCOURT: Parce que Monsieur Doody a insisté -- et, en fait, il a parlé de la -- beaucoup de la -- de la cause -- de la motion principale qui

était la motion maintenance et champartie et les refus dans cette motion-là.

LA COUR: Oui.

M. RANCOURT: Il a argumenté ça beaucoup.

Et pendant son argumentation, il a parlé des affidavits que j'avais soumis et il a semblé dire dans son factum que j'ai fait ça hors -- hors norme.

Par exemple, si on regarde son -- si on regarde son factum -- aye, il faut que je trouve rapidement son factum.

LA COUR: C'est lequel donc?

M. RANCOURT: Le factum de Monsieur Doody ---

LA COUR: Oui. Non, mais il y en a trois.

Ah, 'Doody'? Excusez-moi. 'Doody', o.k., excusez-moi.

MR. DOODY: Your Honour ---

M. RANCOURT: Oui, oui.

MR. DOODY: Your Honour, I ---

M. RANCOURT: Voici, je l'ai. Je l'ai.

MR. DOODY: Well, just a second.

LA COUR: Oui.

MR. DOODY: If I may?

Mr. Rancourt is now moving into the subject of whether Justice Beaudoin showed a reasonable apprehension of bias because he refused to consider on the Refusals Motion two affidavits which were sworn after the cross-examination.

THE COURT: Too late to do that.

MR. DOODY: It's too late to do that.

And Justice Beaudoin had ruled on a case conference that those -- those affidavits were

not properly before the Court.

THE COURT: I know.

MR. DOODY: And he said: If you want to bring a motion to put them in, that's going to be argued on the same day as the Champerty Motion.

But I rise now to say ---

THE COURT: He's ---

MR. DOODY: --- Mr. Rancourt didn't say anything about that when he stood up.

THE COURT: No, no, and you didn't ---

MR. DOODY: And I didn't respond.

THE COURT: In reply, only replies.

Again, la règle de réplique c'est que c'est quelque chose que, eux, y ont soulevé ---

M. RANCOURT: Ils ont soulevé. Ils ont soulevé -- Monsieur Doody a parlé des affidavits et ce que Monsieur Doody vient de dire est faux.

J'ai ici les mots du Juge Beaudoin qui disent le contraire. J'ai -- j'ai le 'transcript', j'ai l'ordre du Juge Beaudoin où il dit ---

MR. DOODY: This is not reply, Your Honour.

M. RANCOURT: --- vous pouvez -- le Juge Beaudoin m'a dit: Vous pouvez mettre votre affidavit le 23 avril c'est dans -- c'est dans une décision et c'était expliqué dans des procès-verbals.

Tout ce que Monsieur Doody a dit à ce sujet-là est pas correct. C'est faux.

Et j'ai ici les documents, on a le temps ---

MR. DOODY: Your Honour, it's not ---

M. RANCOURT: --- de les regarder. On a le temps de les regarder.

MR. DOODY: Your Honour, please, with respect, it

is now a quarter to five. Your Honour established timelines this morning ---

THE COURT: Yes ---

MR. DOODY: --- which my -- which Mr. Rancourt has ridden over, rough trot, with horse and carriage.

THE COURT: You folks -- you folks are too fast!

MR. DOODY: And -- no, but with the greatest of respect, he's now ---

M. RANCOURT: Et ---

MR. DOODY: --- standing before the Court and saying I misled the Court ---

THE COURT: The problem ---

MR. DOODY: --- and he's doing so and it's inappropriate reply.

THE COURT: And the problem is what -- le problème -- le problème c'est que c'est pas quelque chose qu'on peut soulever à ce point-ci.

M. RANCOURT: Mais, monsieur le juge, j'ai essayé de soulever ça dans mes arguments principaux, vous m'avez dit: On n'a pas le temps. Vous allez le -- vous allez mettre ces choses-là après.

Les choses que j'ai pas le temps de faire, vous allez les mettre en réponse. Donc, moi, j'ai attendu patiemment parce que ça c'est pas des choses nouvelles, c'est des choses qui sont dans le factum.

LA COUR: C'était pas -- c'était pas toute l'argumentation, j'ai dit simplement -- ça c'est sur la première partie. Ça c'était -- ça, ça faisait partie de -- des décisions du 20 juin;

non? C'est le premier -- ça c'est la première décision qu'ils ont -- que tout ça s'est soulevé.

Vous avez tout le temps nécessaire pour faire comme vous voulez pour la première décision.

Où vous commencez à perdre votre temps c'était avec la décision du 6 septembre. Ce n'a rien à faire avec cela.

M. RANCOURT: J'ai -- j'ai attendu en réponse parce que j'ai pas eu le temps de le faire.

Si vous m'aviez donné le temps, j'aurais fait ça mais, en plus ---

LA COUR: Vous avez pris tout le temps nécessaire pour la première litige parce que celui-là m'intéressait; o.k.? Et donc, je vous ai laissé aller.

Et quand vous avez compris un peu celui du 6 septembre ne m'intéresse pas beaucoup ---

M. RANCOURT: Oui.

LA COUR: --- et, donc, c'est ça la réalité.

Et donc, vous avez eu toutes les chances nécessaires et, donc, à ce moment, vous pouvez pas soulever ça parce que c'est seulement, moi, je devrais donner l'occasion aux autres de répondre et on va pas -- on n'est pas pour faire cela.

Et, en plus, j'ai constaté que c'était pas le cœur de votre argumentation de toute manière.

M. RANCOURT: Dans ce cas-là, monsieur le juge, je demanderais -- étant donné que j'ai les preuves ici, que c'est dans les procès-verbaux, que c'est dans les décisions, je demanderais de que tout ce que Monsieur Doody a dit à propos de

mes affidavits soit radié du -- de son factum.

LA COUR: Aucune chance.

Aucune chance. On ne radie pas des choses dans nos factum. C'est pas -- c'est pas comme -- tu sais, c'est pas comme c'est un document qu'on radie les choses, nous, on devra garder dans nos archives tout ce que tout le monde dit.

Donc, c'est ça la réalité.

Je pense que vous êtes pas mal terminé et, moi, j'ai été assez patient, je pense.

M. RANCOURT: Oui.

LA COUR: Oui, et donc, à moins qu'il y ait quelque chose, je pense que je suis prêt à fermer et je pense que je vais prendre tout ça en délibération.

Et je vous remercie pour votre -- votre travail, vous avez bien travaillé. Je remercie les avocats aussi. I thank the lawyers as well for the work they did.

You're definitely not going to get this for a while because I won't be here next week but I'll try to get it out as quickly as I can.

Voilà.

M. RANCOURT: Et, en plus, vous devez attendre mes ---

LA COUR: Oui, c'est ça. C'est une autre réalité là.

M. RANCOURT: Oui.

LA COUR: O.k.?

M. RANCOURT: Merci beaucoup.

LA COUR: Et donc, if all that -- si ça, tout ça est là pour le 23 novembre -- le 23?

M. RANCOURT: Le 23, oui.

LA COUR: Bien, je vais faire mon possible de peut-être sortir ça assez vite là.

M. RANCOURT: O.k. Merci.

MR. DEARDEN: Your Honour, I'm not pressuring you but the December 13th ---

THE COURT: Is coming.

MR. DEARDEN: --- is coming but I believe we did this with Justice Smith that if you could make a decision -- because we had something else scheduled that mattered and was open court ---

THE COURT: And ---

MR. DEARDEN: --- and that -- he gave the order ---

THE COURT: Yes.

MR. DEARDEN: --- and then the reasons later.

THE COURT: Later, all right. I'll do that.

MR. DEARDEN: So we could get on with the schedule.

THE COURT: Yes.

MR. DEARDEN: And if you can do that too if you wish.

THE COURT: I appreciate that.

No, I understand. So December 13 is your -- is your drop dead date?

MR. DEARDEN: Is the ---

THE COURT: I'm not going to be that long.

MR. DEARDEN: Is the argument on the Champerty Motion.

THE COURT: The 23rd ---

MR. DEARDEN: If the Leave Applications are dismissed.

THE COURT: Yes.

All right. Now, we need a pack horse to get this up to my office.

MR. DEARDEN: He's sitting right in front of you!

(LAUGHTER/RIRES)

(SHORT PAUSE/COURTE PAUSE)

LA COUR: Merci. Goodbye. Thank you very much.

M. RANCOURT: Merci.

MR. DEARDEN: Thank you.

MR. DOODY: Thank you, Your Honour.

THE COURT CLERK: All rise.

THE REGISTRAR: The Superior Court of Justice is now concluded. La Cour supérieure ...

--- L'audience est ajournée à 15h51

C E R T I F I C A T I O N

I, Johanne Laporte, hereby certify the foregoing pages to be an accurate transcription of the notes/recordings, and I so swear:

5  TRANSCRIPT ORDERED: Nov. 20, 2012

TRANSCRIPT COMPLETED: March 28, 2013

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FILE NO. 11-51657

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST.LEWIS

v.

DENIS RANCOURT

TRANSCRIPT OF PROCEEDINGS

BEFORE:

Mr. Justice Smith

APPEARANCES:

Mr. R. Dearden
Mr. D. Rancourt
Mr. P. Doody

for the Applicant
for the Respondent
for University of Ottawa

J. Hanania
E. Labaky
A. Pressman

Court Service Officer
Registrar
Reporter

Held at
Courtroom 21
161 Elgin
Ottawa, Ontario

Date
November 26, 2012

(i)

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--- Upon commencing at 10:18 a.m.

THE REGISTRAR: Oye, oye, oye, all having matters before the Queen's Justice of the Superior Court of Justice attend now and you shall be heard. Long live the Queen.

Oye oye oye que toute personne ayant affaire à soumettre à Sa Majesté de la Cour supérieure de se présenter maintenant et vous serez entendue. Vive la Reine.

Veuillez vous asseoir. Please be seated.

LA COUR: Donc, qui est-ce qui commence et? Monsieur Rancourt, bonjour.

M. RANCOURT: Bonjour, monsieur le juge.

Alors, il y a une première question ---

LA COUR: C'est votre motion en premier ou non?

M. RANCOURT: Justement, je veux adresser ---

MR. DEARDEN: Yes.

M. RANCOURT: --- cette première question.

Ma position c'est que non mais je voudrais expliquer un peu.

Premièrement, monsieur le juge, est-ce que vous avez pris une décision sur la motion de refus de Madame Gervais?

LA COUR: Donc, ça, je réponds pas à ces questions. Donc, ---

M. RANCOURT: O.k., je n'ai ---

LA COUR: Non, il y a pas -- il y a pas de décision écrite à ce moment ici.

M. RANCOURT: Je n'ai pas reçu aucune décision au sujet de -- de cette chose.

LA COUR: Non, il y a aucune décision. À date,

non.

M. RANCOURT: D'accord.

Alors, je voudrais exprimer -- je voudrais mettre de l'avant une motion pour exprimer qu'on ne peut pas, donc, poursuivre avec la motion -- ma motion de refus étant donné que il n'y a pas eu de décision dans la motion à l'intérieur de cette motion qui est la motion de refus de Madame Gervais pour les -- pour les questions ---

LA COUR: Non, j'ai pas l'intention d'ajourner. Ce le même juge, c'est moi le juge des deux matières. Moi, j'ai déjà entendu vos plaidoiries sur l'autre -- l'autre matière, donc, je vois en regardant -- en lisant toute -- c'est les -- ça, les mêmes -- les questions se ressemblent beaucoup.

C'est l'inverse des questions de Madame Gervais. C'est: « Votre refus que vous refusez d'admettre ou de répondre à des questions parce que tu connaissais Madame Gervais, oui ou non? », et cetera.

Madame Gervais refuse de répondre est-ce qu'elle connaissait vous, et cetera, et cetera.

Donc, ---

M. RANCOURT: Oui, alors, monsieur le juge, ---

LA COUR: Je sais pas, c'est pas nécessaire à répondre.

M. RANCOURT: Je comprends.

LA COUR: O.k.

M. RANCOURT: Monsieur le juge ---

THE COURT: Unless -- Mr. Dearden?

MR. DEARDEN: Just one second, please.

M. RANCOURT: Monsieur le juge?

MR. DEARDEN: Just one second, please.

LA COUR: Non, attends.

M. RANCOURT: J'avais pas fini.

LA COUR: Non, non.

MR. DEARDEN: Your Honour, I need to go on the record with -- because we never know what this Defendant is going to do with -- we just ended it because your decision is absolutely correct.

To refresh Your Honour's memory, September 27th case conference, you ruled there would be one day set aside for the Gervais cross refusals. The Defendant's motion regarding the examination for discovery of Professor St. Lewis and the third motion to be heard, and it was in this order, would be the Plaintiff's motion with respect to Mr. Rancourt's examination for discovery.

And you'll recall that, on October 30th, I confirmed what the order would be because we didn't finish the three motions; in fact, we didn't even get to the examination for discovery's motion so you set them for today. But I confirmed that the order -- and you have it in my notes -- October 30th, you ruled two hours for the refusals with respect the Joanne St. Lewis examination for discovery, two hours for the refusals in the Denis Rancourt examination for discovery and that would be November 26th.

Mr. Rancourt never objected -- gave me notice

5 that he was going to do what he's just done today and what is more troubling is he's -- he's once again, Your Honour, submitted to you that he had to have the decision in the Gervais cross-examination refusals motion before his motion could proceed and you rejected that submission.

You rejected that the last time he made that submission and he does it again.

10 And this morning, Your Honour, I just happened to say to him before the Court opened was: "You're going first." and he says: "No, I'm not." and I said: "What are you talking about? I mean, we have the order set."

15 And I told him, you know, he just has to stop doing this, that he doesn't give notice to counsel and I said: "Show me what it is you're talking about." because he said: "I did give you notice." He says: "Well, you'll understand when -- when the Judge comes in and I make my submissions."

20 Completely unnecessary, completely gaming the system, Your Honour, and what I'm requesting today is that the time that he's taken to do yet another ambush that, no, we don't proceed with the -- in the way that the Court has ruled not once but twice, that time that he's wasted be used against him in his hour that he has for his refusals so that he stops doing it.

25 30 **M. RANCOURT:** Monsieur le juge, ---

THE COURT: No -- je suis d'accord juste pour la question que -- mais on a seulement commencé au,

5
quoi, 10h15. Moi, je sais pas pourquoi que ça pris un 15 minutes de délai, donc, -- mais je vais vous accorder 10 minutes sur votre temps sur cette question de une motion pour un autre ajournement.

M. RANCOURT: Merci, monsieur le juge.

LA COUR: O.k.?

M. RANCOURT: Merci, monsieur le juge.

LA COUR: Donc, vous en restez ---

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M. RANCOURT: Et je veux -- je veux simplement dire sur le procès-verbal que je suis pas du tout d'accord, je m'objecte aux caractérisations que Monsieur Dearden vient de faire à propos de notre conversation de ce matin. Chu -- c'est, à mon sens, faux de la façon qu'il a caractérisé ça.

Donc, je m'objecte formellement à ça.

20
Et, donc, voici, monsieur le juge, merci pour ces 10 minutes. Probablement que j'aurai pas besoin de 10 minutes.

Alors, donc ---

LA COUR: Non, non, 10 minutes a déjà compté parce qu'on a commencé à 10h15.

25
Parce qu'il y a -- on avait fixé des temps limites pour -- pour cette manière. Est-ce qu'on avait fixé deux heures au complet?

Je me souviens pas exactement de -- des temps qu'on avait établis.

30
M. RANCOURT: Monsieur le juge, ces temps étaient de toute évidence pas raisonnables c'est pour ça que ça nous a pris la journée ---

LA COUR: Non, non, non, non. Non, non, non,

moi, je vais entendre ---

M. RANCOURT: --- pour faire deux motions la dernière fois.

LA COUR: Je suis pas d'accord avec vous, Monsieur Rancourt. Moi, je suis impliqué avec cette matière depuis deux/trois mois, quatre mois. Je commence à avoir un bon sens. Les mêmes points se font dans les deux côtés. Ici, dans les questions d'examen au -- examens sur les affidavits et aussi contre-interrogatoires sur les affidavits et aussi les mêmes, je vois les mêmes points ici aujourd'hui sur les questions de -- aux examens au préalable.

Donc, ça fait deux -- c'est le double de fois puis je sais pas s'il y a une mal compréhension des buts des examens au préalable.

C'est pas la Cour, c'est pas -- y aura pas de décision par un tribunal avant le procès que si Madame St-Lewis, selon vous, elle a menti quand qu'elle avait dit qu'elle avait pas rencontré Madame Gervais une telle date. Madame Gervais dit: Non, non, on s'est rencontrées après le rapport.

Ça c'est une question de faits. Finalement, ça sera au procès, ça sera au juge, au jury, au procès de décider: Bon, est-ce qu'on croit la preuve de Madame St. Lewis ou est-ce qu'on croit la preuve de votre témoin, Madame Gervais?

Donc, ça c'est des points -- bon, vous êtes au courant de la position puis Monsieur Dearden est aussi au courant de la position ou de la preuve

de Madame -- ou Maître Gervais.

Donc, c'est le but des examens au préalable.

C'est pas un procès pour -- y aura pas de décision qui est-ce qu'y a raison.

Y aura une décision à un moment donné mais pas ici et pas devant moi. Moi, c'est juste la question de pertinence: Vraiment, est-ce que c'est raisonnable?

Puis je vois un procès -- je devrais vous dire, je mets ça sur le record -- qui se dérape c'est en sorte de mots qu'on -- des documents déposés c'est des questions de refus. Vous êtes au courant des dépens, j'ai déjà accordé. Vous avez perdu d'autres motions, dépens très dispendieux dans ces processus de débattre des points si c'est des points nécessaires, importants.

Mais ça peut pas continuer avec cette approche de prendre -- de refaire les mêmes choses deux fois, trois fois.

M. RANCOURT: Monsieur le juge ---

LA COUR: Donc, je suis pas d'accord avec cette sorte de procédure pour vous ni pour Monsieur Dearden.

M. RANCOURT: Monsieur le juge, ---

LA COUR: Bon, c'est une approche que, moi, je veux que ça procède dans une manière efficace ---

M. RANCOURT: M'hm.

LA COUR: --- avec justice à vous deux pour que la question qui vraiment à fond de cette matière c'est: Est-ce que votre blog, votre -- vos

déclarations sur votre publication, est-ce que c'est diffamatoire, oui ou non, finalement? Et puis c'est quoi les dommages?

Ça c'est le point. C'est un ---

M. RANCOURT: Ultimement, oui, monsieur le juge.

LA COUR: C'est un procès en diffamation; n'est-ce pas ou est-ce que j'ai manqué la ---

M. RANCOURT: Bien sûr, monsieur le juge.

LA COUR: Bon.

C'est ça la question.

M. RANCOURT: Alors, ---

LA COUR: C'est pas une question de ---

M. RANCOURT: Accordez-moi quelques minutes, monsieur le juge, s'il vous plaît.

LA COUR: Bon, moi, c'est des commentaires généraux. Moi, je suis juge qui gère ce procès. Donc, il faut qu'on avance dans une manière efficace.

M. RANCOURT: Oui, monsieur le juge.

LA COUR: Sinon, ça ça déroute pis ça devient une sorte -- pas « show » mais c'est une sorte -- c'est pas bon pour vous ni Maître Dearden. Les gens qui paient les dépens y faut que les questions que ça soit proportionnel aux questions en -- questions en dispute.

M. RANCOURT: Bien sûr, monsieur le juge.

LA COUR: On peut pas -- on peut pas se partir des -- des tangences.

M. RANCOURT: Bon, alors, monsieur le juge ---

LA COUR: Je donne ça comme commentaire général.

M. RANCOURT: Oui.

Monsieur le juge, je comprends -- je veux vous

assurer que je comprends parfaitement tout ce que vous avez dit et que je suis d'accord avec la partie que il faut que ça soit pertinent à la motion qui est devant nous.

LA COUR: C'est ça.

M. RANCOURT: Bien sûr.

LA COUR: C'est ça.

M. RANCOURT: Je suis complètement d'accord et je comprends parfaitement ce point, monsieur le juge.

LA COUR: Donc, allons-y.

M. RANCOURT: Maintenant, mon premier point que je veux prendre deux minutes pour le faire et le mettre sur le procès-verbal -- que j'essaie de faire ça depuis le début -- c'est le point suivant: c'est une question de justice naturelle que je veux -- je veux soulever.

Alors, voici, si vous -- si vous regardez mon -- ma Notice de motion, monsieur le juge, ---

LA COUR: Ça c'est votre Avis de motion?

M. RANCOURT: Mon Avis de motion, oui.

Donc, il y a un factum qui est plus petit puis il y a l'Avis de motion qui est peu plus gros.

LA COUR: Oui.

M. RANCOURT: Et si vous regardez ---

LA COUR: Juste avant qu'on -- moi, j'ai aussi une motion de Monsieur -- Maître Dearden. Est-ce que j'ai un factum?

MR. DEARDEN: No.

THE COURT: Do I have a Factum from you?

MR. DEARDEN: No.

THE COURT: I didn't see one. So just ---

MR. DEARDEN: No, you don't, Your Honour.

LA COUR: Pour clarifier que j'ai votre motion

MR. DEARDEN: You have a Book of Authorities.

LA COUR: J'ai votre motion et j'ai votre factum.

M. RANCOURT: Très bien. Merci.

LA COUR: Ce sont les documents.

M. RANCOURT: Alors, pour faire mon premier point ---

LA COUR: O.k.

M. RANCOURT: --- j'aimerais attirer votre attention sur la Notice de motion qui est à l'onglet 1 de mon Avis de motion.

À l'onglet 1, il y a ma Notice de motion; n'est-ce pas?

LA COUR: Oui.

M. RANCOURT: Et à la page 6 de cette Notice de motion ---

LA COUR: Mais je veux juste clarifier le temps, avant qu'on aille dans des points.

M. RANCOURT: J'ai besoin de deux minutes, monsieur le juge ---

LA COUR: Non, non.

M. RANCOURT: --- pour faire ce point.

LA COUR: Non, non, non, non, non, je vais -- je vais vous accorder le temps, c'est sûr. C'est sûr.

Je -- mais, juste, on avait fixé deux heures. Ça c'est pour vous deux. It's for the two of you; is that right?

MR. DEARDEN: Total.

THE COURT: Total time.

MR. DEARDEN: Yes, two hours on his motion ---

THE COURT: Okay.

MR. DEARDEN: --- on Joanne's discovery ---

THE COURT: Yes.

MR. DEARDEN: --- and two hours allocated
for ---

THE COURT: For your motion.

MR. DEARDEN: --- his examination for discovery.

THE COURT: So what -- qu'est-ce que je vais
faire au début c'est: You have an hour, you
have an hour and 10 minutes reply; okay?

M. RANCOURT: Là -- là, maintenant ---

LA COUR: On a commencé à 10h15.

M. RANCOURT: Monsieur le juge ---

THE COURT: So Mr. Registrar, would you keep
track of those times?

THE REGISTRAR: Yes, Your Honour.

M. RANCOURT: Monsieur le juge?

LA COUR: Parce que j'ai l'intention de suivre
-- j'ai mentionné ça plusieurs fois -- de suivre
cette ---

M. RANCOURT: Oui.

LA COUR: --- ce régime, donc.

M. RANCOURT: Monsieur le juge, là, vous venez
d'ouvrir un autre point ---

LA COUR: Non, non.

M. RANCOURT: J'étais en train de faire un point
et vous avez parlé des temps limites pour
aujourd'hui.

LA COUR: Oui.

M. RANCOURT: Donc, je vais maintenant revenir

pour parler des temps limites sur aujourd'hui

LA COUR: O.k.

M. RANCOURT: --- parce que j'ai une autorité
ici et j'ai un argument comme quoi ce -- ce
temps limite est discutable parce que ---

MR. DEARDEN: No, Your Honour, I object to this.
He hasn't served me with -- or give me ---

THE COURT: No.

MR. DEARDEN: --- any prior notice of the case
law ---

THE COURT: No, I will allow -- I will allow him
to bring any matter he wishes within the realm
of procedural matters but it's clear -- ça
devrait être clair -- that it's coming from your
time unless I -- you convince me to extend it.
Because I intend to stick to my order that I'd
previously gave.

So you both had notice that there was two hours.
I've extended it by an extra 10 minutes and an
extra 15 minutes.

Un autre 15 minutes qu'on a ---

M. RANCOURT: O.k.

LA COUR: Je sais pas si c'est alloué à --
devrait être ---

M. RANCOURT: Je vais -- monsieur le juge, je
propose la chose suivante: Je veux adresser la
question procédurale de limite de temps. Je
vais -- j'ai besoin de cinq minutes pour ça.

LA COUR: Oui.

M. RANCOURT: Et ensuite, je vais adresser la
question procédurale s'il y a un problème de

justice fondamentale, de justice naturelle par rapport à continuer sans avoir eu les résultats de la motion Mireille Gervais.

Ces deux ---

LA COUR: Comme j'ai dit ---

M. RANCOURT: --- questions procédurales ---

LA COUR: --- c'est à vous mais ça vient de votre temps. Ça vient de ---

M. RANCOURT: Je veux les adresser.

LA COUR: C'est bien, c'est à vous à décider.

M. RANCOURT: O.k.

J'ai besoin de juste quelques minutes.

LA COUR: Oui.

M. RANCOURT: Alors, voici. Pour ce qui est des limites de temps ---

LA COUR: Mais c'est clair que ça vient de votre part du temps.

M. RANCOURT: Justement, je vais argumenter ---

LA COUR: Ah, parfait.

M. RANCOURT: --- que c'est -- que je ne suis pas d'accord avec que ça vienne de mon temps.

LA COUR: O.k.

M. RANCOURT: Je vais justement argumenter ce point-là. Je vais présenter cette objection procédurale.

Alors, je veux vous donner une autorité qui vient de la 'Divisional Court' que voici, monsieur le juge, et dans cette autorité qui vient de la 'Divisional Court', on parle justement des temps limites pour les arguments orals dans une motion.

Et justement, à la page 13, on explique un peu

la règle fondamentale. Alors, je suis à la page 13. Malheureusement, les paragraphes ne sont pas numérotés, monsieur le juge, mais si on va -- donc, cette autorité que je vous ai donnée c'est *Ferguson v. Imax System Corp. et al* de l'année 1984 de la 'Divisional Court' et si on va au haut de la page 13, le Juge dans cette décision est en train d'expliquer les choses qui sont relatives aux limites de temps.

Et je lis dans ce premier paragraphe, la quatrième ligne dans ce premier paragraphe, en haut de la page 13, je lis:

« The general rule is clear every litigant is entitled to have his case fully presented and fairly considered ... »

et là, il y a une autorité qui est donnée.

« ... but that does not mean that the Court must listen to everything that every counsel or litigant appearing in person wishes to say. The Court must be able to protect itself from needless repetition and prolixity and to confine counsel to submissions that are relevant to issues of substance. Furthermore, the effective operation of motions for any court and several matters are usually heard at each session requires the counsel as a general rule be held to their estimates of the time required for their own arguments."

Alors, mes estimés du temps qui étaient -- que j'avais besoin ça ne s'inscrivait pas du tout dans une seule heure comme vous proposez. Pas

du tout.

J'ai toujours dit, en personne devant la Cour, que ces estimés de temps, à mon sens, étaient trop contraignants. Premier point.

Et deuxièmement, je veux avoir le droit de présenter mon cas avec justice et pleinement tel que je le vois comme étant important.

J'admets, monsieur le juge, et je demande votre -- que vous me guidiez dans ça si vous croyez que je suis en train de traiter un point qui n'est pas pertinent, je vous invite à me le signaler et je vais expliquer pourquoi je pense qu'il est pertinent.

Mais c'est une action privée où on cherche des dommages de \$1 million, monsieur le juge. C'est une action très considérable et il y a un processus de découverte et j'ai le droit d'avoir un bon processus de découverte avant de me défendre dans cette action qui est énorme, qui représente \$1 million.

Et c'est ça le principe de la proportionnalité. Et donc, pour ce qui est des découvertes, je tiens à faire mes arguments pertinents, pleinement, sans perdre le temps de la Cour, sans perdre le temps de mon opposant.

Et ça c'est mon point, monsieur le juge, par rapport aux limites de temps.

Donc, je n'accepte -- je m'objecte à cette contrainte de temps qui est arbitraire à laquelle je n'ai jamais été d'accord et je veux qu'on se tienne aux principes que je peux faire mon argument pleinement et de façon efficace

sans perdre du temps.

Ça c'est ma position pour le temps, monsieur le juge.

LA COUR: Merci.

M. RANCOURT: Et le deuxième point ---

LA COUR: Je devrais répondre à ça.

Comme Juge qui gère le procès, on va procéder dans une manière efficace et, aussi, qui vous donne suffisamment de temps de faire vos points principaux puis avec votre -- votre factum et ça c'est normal d'avoir des temps limites.

Ils ont ces temps limites à la Cour d'Appel.

D'habitude, c'est trois quart d'heure ou une heure. Donc, une heure devrait être suffisant de faire vos points précis et de le faire avec toute justice.

Donc, ça c'est ma décision. On va devant pour ces raisons-là. Merci.

M. RANCOURT: Et mon deuxième point, monsieur le juge, c'était par rapport à une question de justice naturelle par rapport à la motion en cours.

Donc, excusez-moi là, j'ai -- j'ai été obligé de sauter d'un point à l'autre, alors, je reviens -- je reviens à ce point-là. J'ai momentanément perdu -- voilà, j'ai retrouvé. O.k.

LA COUR: Donc, Monsieur Rancourt, vous avez déjà fait cette plaidoirie ---

M. RANCOURT: Non.

LA COUR: --- que ça devrait être entendu avant. J'ai déjà décidé que c'était pas nécessaire. Puis, de toute façon, j'ai pas fait de décision

et puis j'aurai la chance de vous écouter sur ce point sur les examens au préalable avant que je rende la décision dans Maître -- concernant Madame Gervais.

Donc, de toute façon, c'est comme si qu'on avait continué la même journée.

M. RANCOURT: Monsieur le juge ---

LA COUR: Donc, il y a aucun préjudice qu'on procède de cette manière-là.

M. RANCOURT: Laissez-moi mon deux minutes, monsieur le juge.

LA COUR: O.k., vas-y.

M. RANCOURT: Je veux faire mon argument procédurale.

LA COUR: O.k.

M. RANCOURT: Et je dis depuis tout à l'heure que j'ai besoin de deux minutes, alors, s'il vous plaît.

Alors, voici. Si on revient -- donc, j'étais en train de parler de ma Notice de motion qui est à l'onglet 1. Vous l'avez? À la page ---

LA COUR: Oui.

M. RANCOURT: Et je vous ai guidé vers la page 6; n'est-ce pas?

Donc, c'est à l'onglet 1 et à la page 6 de cette Notice de Motion et, à la page 6, je dis:

« The following documentary evidence will be used at the hearing of the motion. »

Et le point 4 dit:

"An affidavit of Student Appeal Centre Director Mireille Gervais sworn July 9th, 2012 and the exhibit attached thereto."

Donc, j'ai dit dans ma Notice de motion que ça c'est l'évidence que j'ai besoin.

Par contre -- et elle a été contre-examinée, Madame Gervais, sur son affidavit. Mais cette motion n'est pas résolue et il y a une possibilité qu'elle -- qu'il y ait un autre procès-verbal, un autre 'transcript' d'une autre contre-examination de Madame Gervais qui va venir plus tard. Il y a une possibilité de ça. Et ce que je suis en train de dire c'est que on nie ma justice naturelle si on -- et on nie aussi mes droits de justice procédurale si on m'oblige à faire une motion sans que j'ai tous les faits devant moi et j'ai droit à avoir tous les faits et ça inclut les nouveaux 'transcripts' qui pourraient être fournis. Ce sont les faits pertinents pour la motion d'aujourd'hui et je n'ai pas, en principe, accès à ces faits si la première motion n'a pas été décidée et si on ne sait pas le résultat de cette première motion.

De toute évidence, cette première motion dans ma motion est pertinente sinon il n'y en aurait pas eu. Monsieur Dearden ne s'amuse pas à faire des choses qui ne sont pas pertinentes.

C'est tout à fait pertinent et c'est important, donc, sinon Monsieur Dearden n'aurait pas passé tous ces heures à contre-examiner Madame Gervais et à faire tout ce qu'il a fait, et j'ai le droit de connaître le résultat de ça avant de continuer avec une motion qui dépend de cette première motion.

C'est une question de mes droits procéduraux d'avoir accès à toutes les données avant de continuer.

Et, aussi, j'estime et je sens en tant que personne non-représentée que c'est une aberration par rapport à la justice naturelle parce que je ne sais pas le résultat de cette première motion et je dois argumenter la deuxième motion qui dépend de cette première motion et je trouve ça fondamentalement injuste, monsieur le juge.

Et voilà -- voilà ce que je voulais présenter.
Et aussi ---

LA COUR: Mais je vais répondre d'abord à ce point.

M. RANCOURT: O.k.

THE COURT: Or, Mr. Dearden?

MR. DEARDEN: Your Honour, on what he's telling you that he needs to know the decision in the Gervais Refusals Motion, we -- the record will show the last time he made the same argument that we said we're carving as a very discrete issue his attempt to require Joanne St. Lewis to be re-examined on what he called "her false -- repeated false sworn statements" about when she met with Gervais.

And that -- none of his other questions that are in play, that he's wasting his time arguing before you about in his motion on other refusals have nothing to do with the Gervais affidavit. He put it in so that he could get Joanne St. Lewis back in a discovery room to ask her

questions about that meeting. That was it and we agreed the last time that could be discreetly taken to the side and everything else in his Refusals Motion regarding Professor St. Lewis' examination for discovery would be dealt with today.

We've dealt with this before.

M. RANCOURT: Monsieur le juge ---

LA COUR: M'hm?

M. RANCOURT: --- quand Monsieur Dearden dit 'oui', je pense qu'il veut dire lui-même parce que, moi, je n'ai jamais été d'accord avec ces propos.

LA COUR: Mais c'est pas une question ---

M. RANCOURT: Et -- et ce que -- ce que Monsieur Dearden ---

LA COUR: --- que vous êtes ---

M. RANCOURT: --- est en train de dire ---

MR. DEARDEN: You decided.

M. RANCOURT: --- c'est faux.

MR. DEARDEN: You decided, Your Honour.

THE COURT: I just said it's not a question of Mr. Dearden -- c'est pas une question de Monsieur Dearden, c'est moi qui avais décidé -- oui, y avait eu des discussions entre vous deux puis moi j'ai fait la décision.

Comme j'ai expliqué, mes objectifs sont que cette matière, cette -- ça procède dans une manière efficace et la moins coûteuse pour vous deux, que ça se rend à une procédure -- un procès si nécessaire ou une conférence de règlement. Vous pouvez avoir les faits pour

peut-être avoir un règlement. Ça serait quelque chose à penser vraiment.

M. RANCOURT: Monsieur le juge ---

LA COUR: Mais, de toute façon, c'est pas -- c'est pas à moi à faire ça, c'est à vous mais les décisions que, moi, j'ai déjà prises, les chances que je vais les changer sans un changement de circonstances ou -- sont -- je vais rester avec mes décisions.

M. RANCOURT: Mais il y a ---

LA COUR: Je devrais dire, pour le record, parce que c'est un -- je crois qu'on fait un record peut-être pour un appel pis vous avez les pleins droits de le faire. Ça c'est -- ça c'est normal dans le processus et puis ...

Mais, moi aussi je fais des commentaires pour le record pour dire que je suis complètement d'accord avec les commentaires de Maître Dearden que ça déjà été décidé et que il n'y a, d'après moi, aucun préjudice. Ça c'est une question de point distinct, question de Madame Gervais pis est-ce qu'elle a rencontré avec la Demanderesse, Madame St. Lewis, à une telle date ou à une autre date?

Ça c'est une autre question et puis c'est -- c'est ça ---

M. RANCOURT: Mais avec tout respect ---

LA COUR: --- affecte vos -- votre motion pis je -- ça c'est ma décision.

M. RANCOURT: Oui. Je comprends ---

LA COUR: Donc, allons -- allons-y ---

M. RANCOURT: --- mais, avec tout respect, je

5
dois dire que vous avez pris cette décision-là
sans entendre les faits venant de moi en quoi ce
ne -- les points de Madame Gervais impactent
plus que juste un -- un item « en silo » comme
dit Monsieur Dearden.

C'est pas vrai et ça impacte plus que ça dans la
motion et vous ne m'avez pas entendu expliquer
ce point-là.

10
LA COUR: O.k., bien, vas-y, explique ce point-
là.

M. RANCOURT: D'accord. Merci.

LA COUR: Je pensais c'était ça vous avez fait
aux premières -- dans vos représentations au
début.

15
M. RANCOURT: J'ai ---

LA COUR: C'était quoi vous faisiez d'abord?
Vous avez déjà fait ce point. C'est ça la
question.

20
M. RANCOURT: Non, j'ai pas -- j'ai pas eu la
chance.

25
LA COUR: Il faut qu'on -- mais rendu -- on est
rendus -- pour le record, c'est 10h45. On a
passé 45 minutes ou au moins 30 minutes ici puis
on n'a pas avancé avant que plus que les
décisions que, moi, j'ai déjà faites il y a un
mois.

Donc, ---

M. RANCOURT: Je ---

30
LA COUR: --- on gaspille le temps.

Selon moi, les -- ces arguments vous gaspillez
le temps ici. Je tiens que c'est à vous à
argumenter votre motion de aujourd'hui qui a

déjà été fixée. Vous devrez le faire. Vous devrez le faire. C'est à vous. C'est comment vous avez ---

M. RANCOURT: Je ---

LA COUR: --- alloqué votre temps, c'était votre décision mais, selon moi, comme une personne non-représentée ---

M. RANCOURT: Mais, monsieur le juge, ---

LA COUR: --- vous devrez le faire, vous devrez prendre votre motion qui est ici pour aujourd'hui puis de faire vos plaidoiries sur ce point-là. Vous devez le faire.

M. RANCOURT: Avec tout respect, monsieur le juge, ---

LA COUR: Ça c'est mon consigne.

M. RANCOURT: --- vous n'avez pas entendu -- vous m'avez jamais entendu ---

MR. DEARDEN: I object.

M. RANCOURT: --- expliquer pourquoi ---

MR. DEARDEN: I object, Your Honour.

M. RANCOURT: --- pourquoi ---

MR. DEARDEN: I object.

Please, excuse me.

THE COURT: Just a second.

MR. DEARDEN: I object to him saying to the Court that you haven't listened to him. You have listened to him ---

M. RANCOURT: J'ai pas dit ça ---

MR. DEARDEN: --- far more than you need to listen to him.

You've decided, he should get on with his motion right now ---

LA COUR: Ça c'est ---

MR. DEARDEN: --- and ---

LA COUR: Ça c'est la deuxième fois -- c'est la troisième fois, je crois, je dis on avait déjà fixé ça. J'ai déjà vous avez entendu puis je vous ai entendu depuis une demi-heure ici à matin.

Donc, il faut aller devant avec la motion.

M. RANCOURT: Avec tout respect, monsieur le juge, les mots qui ont été dits depuis une demi-heure sont pas surtout les miens.

LA COUR: Mais c'est à vous.

M. RANCOURT: Et maintenant ---

LA COUR: C'est à vous.

M. RANCOURT: --- je veux simplement mettre « sur le record » ---

LA COUR: Oui.

M. RANCOURT: --- comme vous dites ---

LA COUR: Oui.

M. RANCOURT: --- l'impact que la décision Gervais a sur la motion en cours. Juste en points très larges. Voici.

Si on revient à la Notice de motion -- ah, non, là, maintenant, je viens à mon factum ---

LA COUR: Monsieur Rancourt, j'ai pas encore décidé l'affaire de Miss -- Madame Gervais, donc, selon vous, vous pouvez faire cette -- cette soumission -- votre -- cette représentation à l'intérieur de votre motion.

M. RANCOURT: O.k.

LA COUR: Vous devrez dire que non pour telle raison. Ou vous devrez avoir d'autres questions

-- parce que j'ai besoin d'autres informations.

M. RANCOURT: D'accord, monsieur le juge,
j'accepte votre ---

LA COUR: Ça c'est ---

M. RANCOURT: J'accepte votre proposition.

LA COUR: --- une manière de le faire.

M. RANCOURT: D'accord, monsieur le juge,
j'accepte ---

LA COUR: Fais-les ensemble puis je vais les
considérer toutes ensemble.

M. RANCOURT: Oui.

Donc, j'accepte votre proposition et je vais
simplement dire que je vais, dans le contexte de
cette motion, expliquer en quoi les décisions de
Mireille Gervais ont un impact; n'est-ce pas?

LA COUR: C'est à vous votre temps.

M. RANCOURT: Oui.

LA COUR: Je vous ai dit c'est à vous à choisir
votre temps ---

M. RANCOURT: D'accord.

LA COUR: --- pour faire avec sagesse.

M. RANCOURT: D'accord. Et ici ---

MR. DEARDEN: Your Honour, I wish to go on the
record to say that what he's doing now is
deliberate.

He's ragging the puck, literally, and you've
warned him "it's coming out of your time" but
this is a Defendant who seeks leave to appeal
everything. It won't matter how fair you were,
he's going to seek leave and that's what he's
doing here is he's setting up that he wasn't
allowed -- he's going to -- 'cause he's going to

5 have like hardly any time to make his arguments
on his motion that he should be arguing now and
he's going to argue: It's totally unfair for
this Court to have constrained him the way it
has because he had to make this ambush motion
that he's just made and he's wasting time.

So I want to put that on the record.

10 Your Honour need not comment on that. I put it
on the record because I'm going to have to point
to it when I defend yet another one of his
endless leave to appeal applications.

15 **M. RANCOURT:** Je trouve ça dégoûtant des
commentaires comme ça. C'est pas -- je fais de
mon mieux. Je mets les points que j'estime
importants et voilà.

20 Un dernier point sur cette question c'est que le
Juge Beaudoin avait déjà décidé l'ordre des deux
motions d'aujourd'hui et j'ai ici le compte-
rendu où il dit que c'est Monsieur Dearden qui
va passer en premier.

Alors, je vous passe ça.

MR. DEARDEN: Oh God! That is just ---

M. RANCOURT: Et ---

25 **MR. DEARDEN:** You decided, Your Honour, twice:
September 27th and October 30th, what the order
would be. I cannot believe this Defendant would
be doing this.

M. RANCOURT: Je ---

LA COUR: Mais ---

30 **M. RANCOURT:** --- à mon sens, monsieur le juge,
il y avait pas ---

LA COUR: Je devrais ---

M. RANCOURT: --- de décision.

LA COUR: Je devrais, juste pour -- je sais que j'ai décidé plusieurs choses. J'ai établi un horaire.

Moi, je peux pas me souvenir exactement -- j'ai pas mes notes de cette journée. Est-ce qu'il y a une transcription de l'horaire? Est-ce qu'on l'avait établi? Que j'avais établi?

Is there a transcript of what I -- the order we decided?

I can't -- I can't honestly remember with -- there were so many motions -- il y a tellement de motions -- counter-motions and I know I have ---

M. RANCOURT: Malheureusement, monsieur le juge, ---

THE COURT: I've organized it in piles ---

M. RANCOURT: M'hm.

THE COURT: Okay? Pile, pile. I've got some other pile. Je mets ça dans des piles pour savoir c'est quelle motion qui procède ---

M. RANCOURT: M'hm.

LA COUR: --- quelle date.

So I cannot say -- I mean, once I decided something -- quand j'ai décidé quelque chose -- it's just the way it is. It's unlikely to have the Judge who's decided something change his or her mind.

M. RANCOURT: Oui. Et ---

THE COURT: That's just a reality.

M. RANCOURT: --- de mon souvenir ---

THE COURT: The whole court process ---

M. RANCOURT: --- vous n'avez pas décidé l'ordre.

THE COURT: The whole ---

M. RANCOURT: Vous avez décidé le temps mais pas l'ordre.

LA COUR: Juste un instant, je parle. Je continue.

Le système -- si les juges ---

MR. DEARDEN: That's false.

LA COUR: --- changeaient leur idée à toute -- chaque moment, on aurait aucun système de justice.

Il faut que -- si le juge, comme moi, si je fais une erreur, donc, il y a des Cours d'Appel qui pourraient corriger les affaires. Ça, y sont là pour ça mais, moi, il faut que je prenne des décisions, j'écoute les parties puis je fais une décision.

Si j'ai pas raison, bon, il y aura quelqu'un d'autre. Mais je ne suis pas pour reprendre -- comme siéger sur un -- un juge d'appel sur mes propres décisions.

M. RANCOURT: Bien sûr.

LA COUR: C'est pas bon pour vous, c'est pas bon pour -- et, moi, je tiens avec les décisions que j'ai déjà faites sans qu'il y ait un changement de circonstances assez majeures pour qu'un autre ---

M. RANCOURT: Mais malheureusement, monsieur le juge ---

THE COURT: So my question is: Do I have something -- is there some record of what I

decided?

MR. DEARDEN: You have ---

THE COURT: I have no ---

MR. DEARDEN: You have my Echo Smartpen record which I was just trying to see if I could actually pick up your voice but, on September 27th, Your Honour, you ruled: One day for all refusals, Gervais will be motion number 1 then the Defendant's Refusals Motion then the Plaintiff's Refusals Motion.

And, on October 30th, you said: Two hours Refusals, Joanne's examination; two hours Refusals, Mr. Rancourt's examination to be heard November 26th.

You clearly ruled what order ---

THE COURT: Okay.

MR. DEARDEN: --- that this would occur ---

THE COURT: So ---

MR. DEARDEN: --- and it's incredible that he would do this.

THE COURT: --- we're going to -- on va suivre cet ordre.

M. RANCOURT: O.k.

Alors, je vous ai juste signalé que le Juge Beaudoin avait établi un autre ordre et que, moi, je me fiais là-dessus.

LA COUR: O.k.

M. RANCOURT: Et, voilà, je vous ai donné le -- je vous ai -- par exemple, à la page -- à la page 160 de ce 'transcript' de Juge Beaudoin, il dit:

« Je pense que vous avez eu l'occasion de

procéder la première fois ici. Je pense que je vais donner la chance à Monsieur Dearden à procéder. D'accord?

M. RANCOURT: O.k. »

et cetera.

C'est ce que le Juge Beaudoin avait dit et je me fiais là-dessus et Monsieur Dearden avait ce compte-rendu, il le savait.

Bon, et aussi, un dernier dernier point ---

LA COUR: Je vais juste dire, selon moi, il y a pas d'importance si vous allez d'avant avec vos représentations ou si Maître Dearden avec sa motion.

D'après moi, il y a aucun préjudice à une partie ni l'autre. La question de gérance d'un cas, donc, on va rester avec l'ordre que j'ai déjà fait le 27 de septembre.

M. RANCOURT: D'accord. J'entends votre décision, monsieur le juge.

MR. DEARDEN: Your Honour, can I just ask for a clarification here or a translation, please? On page 160, is this not saying that Judge Beaudoin said that he's going to let Mr. Rancourt proceed first?

THE COURT: But, in any event, I don't really care what ---

M. RANCOURT: Non.

LA COUR: --- Justice Beaudoin has said because he has recused himself. He's no longer the Case Management Judge.

MR. DEARDEN: Yes.

THE COURT: I took over the case management of

this case.

MR. DEARDEN: Yes.

THE COURT: I made an order after listening to parties and set some time limits and I've even said a number of times -- three, four, maybe five -- that I intend to respect that.

If that's not clear, it should be getting clearer.

Bon, mon intention est de procéder dans une manière assez efficace et juste mais il faut qu'on -- il faut qu'on aille devant avec les points d'importance.

M. RANCOURT: Oui.

MR. DEARDEN: So, Your Honour, I would also like to make a submission that cost be awarded regardless of the outcome of the Defendant's Refusals Motion.

He has ambushed me, he has ambushed the Court. He's given me a 16-page decision that he relied on that he could have handed to me before we started, instead, he held back on it.

And he has -- this conduct is unacceptable, in my respectful submission, Your Honour. He knew that the order was set, not once but twice, by you and he drags out something that Master -- or that Justice Beaudoin had said back in July and has eaten up 45 minutes of his time.

But he shouldn't have ever done this. He should never have ambushed the Court and me like this and I submit that a cost award should be made against him for doing what he did and if he does it again another time, cost should be awarded

against him again.

M. RANCOURT: Évidemment, je suis pas d'accord du tout.

Voici ma position. Est-ce que je peux répondre, donc, à ça?

LA COUR: Non. Je vais vous entendre sur question de dépens à la fin du procès.

M. RANCOURT: O.k.

LA COUR: Allons-y avec votre motion.

M. RANCOURT: Parce que je risque de l'oublier là mais c'était ---

LA COUR: Il a fait un commentaire, le comportement des gens, l'approche, c'est toujours un facteur.

M. RANCOURT: Oui.

Cette décision de la Cour divisionnelle que je vous ai donnée, monsieur le juge, je viens de la découvrir et c'est la première fois que je peux faire un argument par rapport à la limite de temps et, donc, je l'ai fait parce que c'est pertinent de le faire ce matin. C'est tout. O.k., donc, si je comprends bien, nous commençons maintenant avec ma motion; n'est-ce pas?

LA COUR: C'est ça mais, déjà, on était sur votre motion, on était sur votre motion.

M. RANCOURT: O.k.

Donc, un point procédural par rapport à ma motion qui est important est le suivant:

Monsieur Dearden dans son -- dans sa Notice de motion ---

LA COUR: Non, on fait pas d'affaire avec la

motion de Monsieur -- Maître ---

M. RANCOURT: Non, non, non, non, non, non, non.
Pas la motion de Monsieur Dearden.

LA COUR: Ça c'est -- ça c'est son ---

M. RANCOURT: Non, non, je parle uniquement de
ma motion mais je dis que il a un 'Responding
Motion Record'; n'est-ce pas?

LA COUR: Oui.

M. RANCOURT: O.k.

Et dans son 'Responding Motion Record' ---

LA COUR: J'ai un 'Plaintiff's Motion Record';
c'est ça?

M. RANCOURT: Oui.

Dans ce 'Motion Record', il inclut des pages de
la transcription de l'examen pour les
découvertes et je veux simplement signaler la
règle 39.04(2) qui dit:

« On the hearing of a motion, a party may not
use in evidence the party's own examination
for discovery or the examination for
discovery of any person examined on behalf or
in place of or in addition to the party
unless the other parties consent. »

et je ---

MR. DEARDEN: This is her discovery refusal.

LA COUR: Monsieur Rancourt, sur la question de
examen au préalable ---

M. RANCOURT: Oui?

LA COUR: --- que les gens ont refusé de
répondre à une question, selon votre motion puis
la motion -- si j'ai pas la preuve des questions
qui ont été posées, comment est-ce que je

pourrais décider des refus?

M. RANCOURT: Impossible.

LA COUR: Impossible, donc, merci.

M. RANCOURT: Oui.

LA COUR: C'est un non-sens là que vous essayez de ---

M. RANCOURT: Non, parce que j'ai déjà donné toutes les pages qui étaient relatifs aux questions et aux refus en évidence ---

LA COUR: Monsieur Rancourt ---

M. RANCOURT: --- mais les pages que Monsieur Dearden a données ---

LA COUR: Monsieur Rancourt, allez devant avec votre ---

M. RANCOURT: D'accord.

LA COUR: --- vos représentations sur vos --
quelles questions que vous avez -- y ont des
refus par Madame St. Lewis pis, selon vous, si y
auraient dû être répondues pis, selon vous --
c'est ça la question ici.

M. RANCOURT: Oui.

LA COUR: On est ici pour savoir ---

M. RANCOURT: Mais je suis en train ---

LA COUR: --- il y a des questions ---

M. RANCOURT: --- de prendre deux minutes pour
faire un point procédural.

LA COUR: Ah! Vous avez pris une heure des
choses procédurales qui ne sont pas pertinents.

M. RANCOURT: Si on compte les mots que j'ai
dits, c'est pas une heure, monsieur le juge.

LA COUR: Mais, on a commencé -- c'est trois-
quarts d'heure.

M. RANCOURT: Est-ce que je peux vous montrer une autorité qui dit très clairement ---

LA COUR: Non, allez devant avec votre motion.

M. RANCOURT: --- pourquoi? Pourquoi ---

LA COUR: Allez devant avec votre motion ici.

Vous êtes -- vous êtes le Défendeur, vous avez pris une motion qui dit qu'il y a des questions de Madame St. Lewis a refusé de répondre puis, selon vous, c'est nécessaire que vous avez des -- ces réponses à ces questions.

C'est ça qu'on est ici. J'ai pas entendu depuis le début une question, quelle question, et puis pourquoi c'est pertinent.

M. RANCOURT: Je veux une justice ---

LA COUR: Donc, c'est ça la question il faut que je ---

M. RANCOURT: --- procédurale. Je veux une justice procédurale. Je veux une justice procédurale. C'est ça mon point.

LA COUR: Il me semble que vous ---

M. RANCOURT: J'ai ---

LA COUR: Vous voulez un délai.

M. RANCOURT: Non.

LA COUR: Selon moi, c'est toutes des affaires de délais.

M. RANCOURT: Non. Non.

Pourquoi est-ce que vous faites ce -- cette évaluation, monsieur le juge?

LA COUR: C'est l'impression que j'ai.

M. RANCOURT: Ce sont des questions procédurales importantes.

LA COUR: O.k.

M. RANCOURT: Et je ---

LA COUR: O.k., c'est à vous à décider mais, selon moi ---

M. RANCOURT: Je veux ---

LA COUR: --- je l'ai dit plusieurs fois, si c'est pas clair, que vous devez aller -- que vous devez ---

M. RANCOURT: Je veux ---

LA COUR: Vous avez pris une motion. On a réservé la journée pour faire deux motions: un, c'est votre motion; l'autre c'est la motion de Monsieur Dearden.

M. RANCOURT: Monsieur le juge, ---

LA COUR: J'ai l'intention de compléter ---

M. RANCOURT: --- je veux que vous soyez informé par rapport à ma -- à mon point procédural. C'est tout et je vais arrêter ensuite.

LA COUR: Allons-y.

M. RANCOURT: Je vous donne une autorité.

MR. DEARDEN: I object, again, Your Honour, for the record.

THE COURT: M'hm.

M. RANCOURT: C'est une autorité bien connue, c'est la 3574423 *Canada Inc. v. Bâton Rouge Restaurants Inc.* qui est datée de 2008 et je vous -- j'attire votre attention aux paragraphes 29 et 30 de cette décision et ça dit:

« Evidence on a motion ... »

au paragraph 29:

« Evidence on a motion cannot be led by filing a transcript of an examination for discovery ... »

THE COURT: But it's a test to an affidavit; is it not?

C'est attaché à un affidavit, c'est pour ça.

M. RANCOURT: Mais justement, c'est ça que je veux -- je veux vous amener à ce point-là, monsieur le juge.

LA COUR: Oui. O.k.

M. RANCOURT: Donc, ensuite, on explique la raison de cette règle-là; o.k.?

Et la raison est au paragraphe 30:

« The policy underlying Rule 39.04(2) is that parties wishing to rely on their own evidence on a motion ought not to be able to avoid cross-examination by using their own examination for discovery instead of providing an affidavit. »

Mais l'affidavit qu'ils ont fourni ce n'est pas l'affidavit de la Plaignante, c'est l'affidavit d'un avocat.

LA COUR: O.k. Merci.

Merci ---

M. RANCOURT: Donc -- donc, c'est 'shieldé'.

LA COUR: O.k.

M. RANCOURT: Il y a un écrantage.

LA COUR: O.k. J'ai compris votre point.

M. RANCOURT: Merci.

LA COUR: Merci.

M. RANCOURT: Et donc, pour cette raison, je demande que ces documents ne soient pas admis.

LA COUR: O.k.

La -- cette motion est rejetée parce qu'il existe un affidavit et, de toute façon, pour

répondre à des -- des refus des examens au préalable, ça prend la transcription de ces questions qui ont été posées.

It's not necessary to hear from you, Mr. Dearden, on that point.

M. RANCOURT: O.k., merci, monsieur le juge.

MR. DEARDEN: Your Honour, do you have the original transcript, by the way, of the examination for discovery which Mr. Rancourt was supposed to file as part of his motion?

THE COURT: I don't -- I don't think I have.

MR. DEARDEN: Because I've asked him to do that months ago.

THE COURT: Okay.

MR. DEARDEN: He told me: "No."

Now, I know why he didn't because he thinks that somehow I'm not allowed to actually refer to the transcript of examinations for discovery in a Refusals Motion involving that transcript.

But he was told months ago he had to file the original transcript just I filed the original transcript of his examination ---

THE COURT: I don't think ---

MR. DEARDEN: --- and he's refused to do so. So he should do so now.

M. RANCOURT: Donc, là, je vais répondre parce que il y a une autorité qui montre que la pratique est qu'on n'a pas à faire une telle chose et il y a des bonnes raisons pour ça. Et donc, -- et Monsieur Dearden est sûrement conscient de ces règlements-là et je tiens à signaler que c'est Monsieur Dearden maintenant

qui amène un autre point procédural qui fait perdre du temps. C'est pas moi. C'est Monsieur Dearden qui le fait.

Alors ---

LA COUR: De toute façon, je vais vous laisser procéder, Monsieur Rancourt, sans la transcription parce que vous avez déposé les affidavits et puis les questions nécessaires ---

M. RANCOURT: Oui.

LA COUR: --- j'imagine la transcription, il y en a des portions au moins que vous avez ---

M. RANCOURT: Absolument.

LA COUR: --- sorties.

Si c'est pas complet, je vais entendre Monsieur Dearden.

Mais allons-y.

M. RANCOURT: O.k.

Donc -- donc, cette question que Monsieur Dearden a soulevée est fermée, si je comprends bien?

LA COUR: Bien, pour le moment, je vous laisse continuer avec votre motion. Je veux que vous procédiez avec votre motion.

M. RANCOURT: D'accord, parce que j'ai des autorités qui montrent que c'est pas nécessaire de -- de soumettre à la Cour ---

LA COUR: Je vous laisse procéder. Si il y a un préjugé de quelque sorte que Monsieur -- Maître Dearden peut me convaincre, je vais l'entendre sur ce point à la fin de cette affaire.

M. RANCOURT: Merci.

O.k. Donc, permettez-moi de prendre juste

quelques secondes pour recueillir mes esprits là parce que, là, je me lance dans le -- l'argument principal. Alors, voici.

Oui. Alors, premièrement, j'avais dans ma Notice -- on avait la page tournée à ma Notice de motion, tantôt, monsieur le juge, et je vous ramène si c'est possible à la page 6 de cette Notice de motion et je dis:

« The following documentary evidence includes the pleadings in the action ... »

et, donc, j'avais pas inclus dans le 'Motion Record' mais tout le monde a les 'pleadings' mais juste pour que ça soit utile pour tout le monde, j'ai ici un 'Book of Pleadings' pour votre utilisation.

Et puis, je veux d'abord insister sur le fait que cette motion n'est pas uniquement une motion pour refus mais c'est une motion pour production aussi.

Si on regarde la Notice de motion, à la page 1, c'est très clair:

« The motion is for ... »

Alors, il y a un titre qui dit:

« Communications between University of Ottawa and the Plaintiff's counsel. »

Ce sont les documents qui sont recherchés et je veux qu'ils soient produits.

« Possible prejudice from facts discovered ... »

ça c'est un autre point.

« Possible insufficiency of Plaintiff's searches for discovery. »

On va argumenter ça.

Et je vais -- la motion est aussi pour demander une détermination qu'il y a eu des interférences excessives par le Conseil pendant l'examination. Je vais présenter des données à cet effet-là. Ça c'est le point 4.

Cinquièmement:

« Determination of possible non-cooperation during the examination. »

Des questions très longues qui ne répondent pas et qui perdent beaucoup beaucoup de temps. Je vais donner des exemples de ça et c'était comme ça.

Je veux une production des documents qui sont reliés au paragraphe 2 de ma Notice d'examination. Je veux une production des documents qui sont reliés au paragraphe 3 de ma Notice d'examination, aux paragraphes 5 et 6 de ma Notice d'examination, et au paragraphe 9 et puis -- de ma Notice d'examination et les paragraphes 19 à 22 de ma Notice d'examination. Donc, c'est une motion pour production tout aussi bien que refus des questions pendant les examens.

Et la raison que c'est une motion pour production, monsieur le juge, c'est que les documents que j'ai demandés dans la Notice sont des documents pertinents qui auraient dû être inclus dans l'affidavit de documents et qui n'ont pas été inclus.

Et de toute évidence, étant donné leur nature, ils sont pertinents et ils auraient dû être

inclus. Et j'ai dit très clairement pendant l'examination que je voulais ces documents-là. Alors, je peux vous amener au -- au procès-verbal de l'examination qui est à l'onglet (e); c'est-à-dire 1(e) de ma Notice.

Ce sont des pages du procès-verbal que je vais utiliser et si nous allons à la page 20, j'ai dit très clairement à la Question 32, j'ai dit ---

LA COUR: La page 20?

M. RANCOURT: La page 20 du procès-verbal.

LA COUR: Page -- ça va jusqu'à 25.

M. RANCOURT: Donc, c'est des pages -- je suis à l'onglet 2 ---

LA COUR: (e)?

M. RANCOURT: --- (e) et ---

LA COUR: Ça va de la page -- ligne 1 à 25.

C'est ce que j'ai dans mes copies.

M. RANCOURT: Non, non, je parle de la page -- si vous regardez les pages, ce sont -- ce sont des pages sélectionnées du procès-verbal ---

LA COUR: Oui.

M. RANCOURT: --- et je veux aller à la page 20. Ils sont en ordre mais il manque des pages; vous voyez?

LA COUR: Oui, oui.

M. RANCOURT: Alors, je veux aller à la page 20.

LA COUR: Oui.

M. RANCOURT: O.k.

LA COUR: Ligne? J'avais compris « ligne 32 ».

M. RANCOURT: Ah! Ligne 7.

LA COUR: O.k. J'avais compris « ligne » ---

M. RANCOURT: Question 32.

LA COUR: Ah! O.k. O.k. O.k.

M. RANCOURT: C'est parce que c'est la Question 32.

LA COUR: J'avais pensé -- je pensais c'était la 'ligne 32' ---

M. RANCOURT: Non.

LA COUR: --- puis j'avais juste au ligne 25.

M. RANCOURT: Ah, o.k., je comprends maintenant. Excusez-moi, monsieur le juge.

Alors, donc, à la ligne 7, je dis:

« Thank you. I'm not going to discuss this Notice of Examination anymore today. I invite you to provide me with all documents that you are prepared to disclose at this time. »

Et ensuite, on continue et, donc, il y a une discussion à propos de ça.

MR. DEARDEN: Keep reading. Keep reading.

M. RANCOURT: Et -- excusez-moi, monsieur le juge, c'est moi qui présente mon cas.

MR. DEARDEN: No, no, no. No, you need the rest of the context there, Your Honour, on that page.

M. RANCOURT: Je m'objecte à cette intervention, monsieur le juge.

Vous avez le procès-verbal devant vous, je m'objecte à cette -- à cette -- c'est vraiment inapproprié, je pense, ---

MR. DEARDEN: No ---

M. RANCOURT: --- ce que Monsieur ---

LA COUR: Quand qu'on fait référence à des examens au préalable, y faut donner les parts

pertinents au contexte aussi.

Donc, si ---

M. RANCOURT: Et elles sont là devant vous, monsieur le juge.

LA COUR: Oui, j'ai noté ici:

« Put the question to her, sir.

Okay, then, we're going to move on.”

Donc, vous l'avez pas demandé une question.

M. RANCOURT: J'ai demandé que tous les documents soient produits.

MR. DEARDEN: And then, the -- then, the answer, Your Honour.

M. RANCOURT: Et j'ai re-demandé ---

MR. DEARDEN: The answer at the bottom.

M. RANCOURT: Mais pourquoi est-ce que Monsieur Dearden a la permission ---

MR. DEARDEN: Because you're taking out ---

M. RANCOURT: --- d'interférer comme ça?

MR. DEARDEN: You're taking out of context the questions.

M. RANCOURT: C'est vraiment pas correct.

LA COUR: Non, mais ---

M. RANCOURT: Je m'objecte à ça.

LA COUR: Si y a des questions qui -- comment est-ce qu'on dit ça -- introduit la Cour en erreur -- mislead -- donc, c'est y faut que ça soit complet.

Si le témoin a répondu aux questions à la prochaine ligne, on peut pas dire elle a refusé de répondre.

M. RANCOURT: Bien sûr, mais je cache rien. Je vous dis le 'transcript' et je souligne les

choses dans le ---

LA COUR: Y faut être complet avec une question pour que je comprends la -- la situation.

M. RANCOURT: O.k., alors ---

LA COUR: Ça c'est le fardeau que, moi, j'ai à faire.

M. RANCOURT: Oui.

Alors, donc, je dis -- je dis ça puis Monsieur Dearden insiste que je pose une question.

Mais, moi, ma question c'était: Produisez ce que vous avez à produire, c'est pertinent.

Et, ensuite, à la page 21, la page prochaine ---

MR. DEARDEN: No, no, Your Honour?

You have -- he has to read in what the witness said because he's -- he's dealing with ---

M. RANCOURT: Monsieur le juge, est-ce que ---

MR. DEARDEN: --- the documents requested in that Notice of Examination that's about four pages long and the witness went on record at the bottom of the page.

M. RANCOURT: Monsieur le juge, est-ce que c'est Monsieur Dearden qui dirige la Cour?

LA COUR: Mais vous ---

M. RANCOURT: Je ne comprends pas cette intervention-là.

LA COUR: Non, mais ça c'est -- c'est -- ça c'est si le -- le point que vous faisiez c'est pas exact parce que la preuve était -- les réponses sont dans la transcription.

Il faut que la transcription, la partie soit complète pour que je peux comprendre ---

M. RANCOURT: Mais elle est complet, elle est

devant vous, monsieur le juge.

LA COUR: Si elle a donné une réponse en bas à votre question, c'est ---

M. RANCOURT: Mais ---

LA COUR: C'est important là.

M. RANCOURT: Oui.

LA COUR: C'est pour que, moi, je sache parce que sinon il va le faire ---

M. RANCOURT: Et c'est -- c'est devant vous.

Et je -- Monsieur Dearden insistait pour que ça soit sous forme question par question sur toutes les documents.

LA COUR: O.k., mais selon ça, à la fin, je vois qu'a dit que, oui, elle est prêt, elle a toute fourni les documents.

M. RANCOURT: Um ---

LA COUR: Donc, selon vous, c'est pas -- c'est pas ---

M. RANCOURT: Non, elle a -- elle a fourni aucun document qui était demandé dans -- dans le -- le 'Notice of Examination'.

Elle a fourni les documents qu'elle voulait fournir.

MR. DEARDEN: It's not true.

M. RANCOURT: Qu'elle voulait fournir.

THE COURT:

« ... but I'm not going to allow you to characterize my failure to provide documents that I'm willing to provide as a refusal because you're not willing to go through the paragraphs. »

So ---

M. RANCOURT: O.k.

LA COUR: Vous l'avez pas demandé des questions.

M. RANCOURT: Si, j'ai dit: Les paragraphes sont là devant vous, vous les avez lus, donnez-moi les documents.

Attendez un instant, je vais continuer dans le 'transcript', vous allez voir comment ça se -- comment ça se développe.

Ensuite, à la page 21, en haut de la page, à la ligne 2 -- ou à la ligne 3 plutôt, je dis:

« I have invited you. It is your choice to provide documents you have brought that you are prepared to disclose and to produce at this time period. Let's move on. »

Et là, Monsieur Dearden dit -- là, il décide finalement de donner les documents. Avant, la Plaignante disait qu'elle avait déjà donné les documents. Je ré-insiste et maintenant il me donne des documents et il dit:

« Monsieur Rancourt, yesterday, I informed you I would provide you today our expert report. »

Il donne le 'expert report', et cetera. Et comme ça, dans les pages qui suivent, il a donné des documents après qu'il -- après que la Plaignante a dit qu'il y avait plus de documents, Monsieur Dearden s'est mis à donner des documents.

Moi, je veux tous les documents, il en a donné juste certains et, ensuite à la page 27, on continue toute cette ---

LA COUR: Mais -- mais, Monsieur Rancourt ---

M. RANCOURT: Oui?

LA COUR: --- ici, c'est des questions de --
o.k., questions de production.

M. RANCOURT: Oui.

LA COUR: Quels documents que vous, selon vous,
devraient être produits qui n'ont pas été
produits?

C'est ça la question.

M. RANCOURT: Oui, et c'est ---

LA COUR: Il faut donner quels documents?

M. RANCOURT: Et c'est précisément toute dit
dans le Notice d'examination et dans le -- dans
la -- dans le 'Notice' -- ah, je viens de vous
lire le 'Notice of Motion' ---

LA COUR: Quels documents que, selon vous, sont
nécessaires qui ont pas été produits que vous
voulez une ordonnance que Madame St-Lewis ---

M. RANCOURT: Oui.

LA COUR: --- St. Lewis ---

M. RANCOURT: On va ---

LA COUR: --- vous présente ces documents?

M. RANCOURT: On va les faire un par un,
monsieur le juge.

LA COUR: Quels -- c'est ça, exactement.

M. RANCOURT: Exactement.

LA COUR: C'est ça.

M. RANCOURT: Mais je suis juste en train de
faire le survol en ce moment.

LA COUR: Oui.

M. RANCOURT: Je suis en train d'expliquer que
c'est une motion pour production.

Et, par exemple, si on continue à la page 27, il

y a une réponse en haut de page, à la ligne 2, qui dit:

« So we're finished with the Notice of Examination for discovery? »

Ça c'est la Plaignante qui pose une question et, moi, je dis:

« I'm done with it. It is my position that those are all relevant things that should have been produced. »

O.k.?

THE COURT: Which things?

C'est ça que je pose, quelles choses?

M. RANCOURT: On va y arriver une à une.

LA COUR: Allons-y.

M. RANCOURT: Mais c'est pour montrer la nature de la motion. O.k.

Et ensuite, un autre point important dans cette motion est le point suivant parce que je vais argumenter que la -- la découverte n'a pas été complète par la Plaignante.

Et voici un des arguments principaux et je vais donner des détails de ça.

Tous les documents que j'ai pu découvrir à travers 'Accès à l'information' ou qui venaient de d'autres sources ou que j'ai appris de leur -- de leur existence sans les découvrir, chacun de ces documents qui sont pertinents et que la Plaignante devait avoir, parce que c'était des messages envoyés par elle ou à elle, n'ont pas été divulgués.

Aucun. C'est pas juste des exceptions, tous les documents que je sais doivent exister, aucun ont

été produites par la Plaignante dans son affidavit de documents.

Et je vais donner les exemples un par un.

LA COUR: Allons-y.

M. RANCOURT: Oui, mais c'est pour vous donner mon argument ---

LA COUR: Le numéro 1. Le numéro 1 -- bon.

Et là, vis-à-vis votre temps, il faut aller à des questions que je peux savoir quels documents ou quels qui n'ont pas été produits.

M. RANCOURT: O.k.

LA COUR: Il faut que tu le dises parce que, moi, je peux pas deviner dans l'air.

M. RANCOURT: Oui, oui, oui, oui, oui.

Donc, on va aller à ce qu'on peut appeler: « Le Refusals and Undertaking Chart » et ce 'Refusals and Undertaking Chart' est à l'onglet 5 de mon -- de mon Motion Record.

Et j'ai aussi préparé une -- une copie indépendante si c'est plus facile pour vous. J'imagine que oui. Est-ce que -- est-ce que vous aimeriez avoir une copie indépendante plus facile à ---

LA COUR: Non. Non, c'est correct.

M. RANCOURT: Non? O.k.

LA COUR: C'est correct.

M. RANCOURT: Alors, si on -- donc, je suis à l'onglet 5 et on va passer à travers, point par point.

Permettez-moi de m'asseoir pour être plus près de mon texte. Avec mes lunettes, j'ai du mal.

THE COURT: Do you have any objection to that?

MR. DEARDEN: Not at all.

THE COURT: Okay, that's fine. C'est bien.

M. RANCOURT: Merci.

Le premier point -- alors, je connais pas le mot en français pour 'issue' dans le sens de groupement de questions.

LA COUR: Questions.

M. RANCOURT: Oui.

LA COUR: Questions en litige.

M. RANCOURT: Questions en litige mais c'est -- questions -- mais, en tout cas, il y a pas de mot spécifique là ---

LA COUR: Non. Non.

M. RANCOURT: Je vais peut-être utiliser 'issue' parce que c'est un bon mot.

Donc, le premier point c'est que je voulais toutes les communications -- dans mon -- dans mon 'Notice of Examination' au paragraphe 5 -- d'ailleurs, le 'Notice of Examination', il est dans les documents ici. Je vais simplement le trouver à quel onglet là.

C'est à l'onglet 'D', 2(d). L'onglet 2(d) c'est le 'Notice of Examination' où il y avait beaucoup de paragraphes et, au paragraphe 5, je disais:

« ... all documents in your possession, control or power that are relevant to the issue of the instant lawsuit as lawsuit by proxy ... »

Donc, ça c'était dans le -- dans le 'Statement of Defence':

« ... including but not limited to all e-mails between your counsel and the University of

Ottawa staff and/or executives and/or Board member and including but not limited to the e-mail from Allan Rock to Richard Dearden of March 30th, 2012 at 11:29 a.m. »

Donc, je voulais tous ces documents-là qui étaient des documents entre -- qui sont pertinents et qui sont échangés entre la Plaignante ou son avocat et l'Université d'Ottawa. J'ai demandé ça et je veux qu'ils soient produits. Ils n'ont pas été produits. Ils ont même refusé de produire celui que maintenant on connaît l'existence, celui du 30 mars 2012, 11h29.

LA COUR: Ça c'est un fait contesté. J'ai déjà fait affaire avec ça ---

M. RANCOURT: Vous avez ---

LA COUR: --- dans ---

M. RANCOURT: Vous avez, dans votre décision, dit que c'était un vrai courriel.

Votre décision dit qu'il y a eu un tel courriel qui a été envoyé par Monsieur Rock cette date-là.

C'est dans votre décision. On peut sortir votre décision, si vous voulez, monsieur le juge. Je l'ai ici.

LA COUR: Et vous l'avez une copie de ce courriel mais c'est question: Est-ce que c'est une copie envoyée deux ans après la date?

C'est ça la question. Question de 'Outlook' et comment c'était -- ça, ça déjà été documenté.

M. RANCOURT: Oui, et vous avez -- je prends votre jugement, monsieur le juge, et vous avez

dit au paragraphe 32 de votre jugement -- je
peux vous donner une copie si vous voulez ---

LA COUR: Non, non, pas nécessaire.

M. RANCOURT: O.k.

LA COUR: Tu peux la lire.

M. RANCOURT: Oui, je peux la lire.

LA COUR: Lire le ---

M. RANCOURT: Le jugement daté du 6 septembre
2012, au paragraphe 32, vous dites:

« A copy of the e-mail was forwarded to
counsel for St. Lewis on March 30th, 2012 ...”

LA COUR: C’était la -- c’est la position -- ça,
ça serait une question de preuve au procès.
Selon vous, c’était envoyé 2010 puis, selon
Maître Dearden, c’est envoyé en 2012.

M. RANCOURT: C’est une question de preuve pour
cette motion parce que si le document existe, il
doit être produit ainsi que tous les autres
documents semblables.

LA COUR: Oui, mais ils ont répondu que il
existe pas parce que c’est une copie qui a été
envoyée selon -- il y a pas de communication en
2010 entre Maître Dearden et Allan Rock.

M. RANCOURT: Je sais ce qu’ils ont répondu mais

LA COUR: C’est ça, ils ont répondu à la
question, donc, c’est pas à moi à dire: Non,
c’est vrai ou, non, c’est pas vrai.
Ça c’est la réponse. Ils ont répondu ---

M. RANCOURT: C’est à moi à argumenter que c’est
pas vrai pour cette motion qui est devant nous.

LA COUR: Non, mais ---

M. RANCOURT: Et l'argument ---

MR. DEARDEN: Just for the record, Your Honour,

M. RANCOURT: Et l'argument ---

LA COUR: Attends.

MR. DEARDEN: I ---

M. RANCOURT: Là, pourquoi est-ce qu'il y a une
interjection?

MR. DEARDEN: I object to how he's characterized
what you decided already and put on the record
that he has ripped out of context in another
proceeding what you supposedly ruled on and the
record reflects that you have said that all you
did was state a position there and that the real
issue -- and we've dealt with it before you,
we've dealt with it before Justice Beaudoin --
the real issue is: Was this just a function of
Outlook and no e-mail was sent?

And I will have submissions for you exactly what
Joanne St. Lewis said in her discovery about
whether an e-mail was sent.
She said it wasn't.

M. RANCOURT: O.k.

Monsieur Dearden ---

LA COUR: C'est ça j'ai compris. C'est ça j'ai
compris de la situation.

M. RANCOURT: Monsieur Dearden vient de nous
annoncer sa position. Il a pris mon temps pour
annoncer sa position mais, maintenant, je vais
expliquer ma position et -- et ma position est
la suivante.

Ma position que ce courriel est réel repose sur

un affidavit d'expert qui a été soumis en évidence dans la motion présente qui est devant nous.

LA COUR: Non, mais, Monsieur Rancourt, selon vous, vous avez eu une copie de ce courriel. Vous l'avez le courriel?

M. RANCOURT: J'ai ---

LA COUR: Vous l'avez. Vous ---

M. RANCOURT: --- une copie papier de ça.

LA COUR: C'est ça.

M. RANCOURT: --- et je veux expliquer ---

LA COUR: Vous avez posé des questions. Selon Madame St. Lewis, c'est une -- une question de Outlook qui a fourni une copie et c'était pas un courriel de monsieur Allan Rock. Ça c'est sa réponse.

M. RANCOURT: Bien sûr!

LA COUR: Selon vous avez un témoin expert qui va dire: « Non, non, non, non, ça c'est pas vrai. » donc ...

Mais c'est pas à moi à décider ça ---

M. RANCOURT: Oui, parce que c'est ---

LA COUR: Vous avez eu une réponse si c'est -- si c'est fausse, au procès -- on n'est pas au procès là, c'est ça que je -- c'est comme -- c'est toutes les faits sont contestés -- mais c'est pas le but d'un examen au préalable d'avoir une détermination sur chaque question: Est-ce que c'est vrai la réponse ou non?

La question c'est de savoir la position de la partie adverse; donc, de savoir c'est: O.k., Madame St. Lewis était au courant que, selon

vous, il existe un contact direct entre le
Président de l'Université d'Ottawa et Madame St.
Lewis.

M. RANCOURT: Monsieur le juge ---

LA COUR: Ça c'est votre position.

M. RANCOURT: Monsieur le juge ---

LA COUR: Je l'ai compris ça.

Eux-autres disent: Non, c'est pas vrai ça. Il
y a eu aucune courriel. Ça c'est une affaire
qui était demandée pour une copie puis Outlook
le génère puis met une date.

Donc, ce que c'est -- ça, c'est que vous avez
une réponse.

Est-ce que c'est vrai? C'est pas à moi à
décider ça aujourd'hui là. Ça c'est -- vous
avez votre réponse. Vous ---

M. RANCOURT: Monsieur le juge ---

LA COUR: Selon vous, vous essayez de prouver

M. RANCOURT: --- avec tout respect ---

LA COUR: --- prouver ces faits-là. C'est pas
ça.

M. RANCOURT: --- avec tout respect ---

LA COUR: Là, le procès ---

M. RANCOURT: --- vous devez décider ça
aujourd'hui parce que ---

LA COUR: Si c'est vrai ou non? Non. Non, non.

M. RANCOURT: --- parce que -- parce que c'est
ça qui établit si y avait un courriel qui doit
être produit et si il y a probabilité qu'il y a
d'autres tels courriels qui -- c'est une motion
pour production et, donc, c'est pertinent de

savoir s'il y a eu ce courriel parce que ça suggère qu'il y en a d'autres.

LA COUR: O.k.

Donc, question: Est-ce que vous avez demandé à Madame St. Lewis: Est-ce qu'il y avait des courriels du Président Rock à elle concernant le sujet de cette action en diffamation?

M. RANCOURT: Oui.

LA COUR: Bon.

M. RANCOURT: J'ai demandé ---

LA COUR: Et est-ce que vous avez eu une réponse de ---

M. RANCOURT: J'ai demandé ---

LA COUR: Est-ce que vous avez ---

M. RANCOURT: --- la chose suivante.

LA COUR: Et est-ce qu'elle a répondu ou non? Est-ce qu'elle a refusé de répondre?

M. RANCOURT: Voici ---

LA COUR: C'est quoi la réponse?

M. RANCOURT: Bien, permettez-moi de le dire.

LA COUR: Oui.

M. RANCOURT: Alors, si on revient au 'Refusals Chart', c'est la toute première question. J'ai dit:

« I want to know if you are prepared to produce the e-mail from Allan Rock ... »

et cetera.

MR. DEARDEN: He's ---

M. RANCOURT: Elle dit:

"There is no such e-mail."

LA COUR: Bon.

M. RANCOURT: Ensuite ---

LA COUR: Une réponse.

M. RANCOURT: Ensuite, je lui ai demandé -- attendez une seconde ...

(COURTE PAUSE/SHORT PAUSE)

M. RANCOURT : Donc, j'ai demandé de produire -- dans la Notice d'examination, je leur ai demandé de produire tous les courriels qui avaient été échangés entre l'Université d'Ottawa et Monsieur Dearden et la Plaignante -- et/ou la Plaignante. Donc, c'est dans la Notice d'examination et cette Notice d'examination, je l'ai déjà dit, j'ai exigé qu'on donne tous ces documents-là pendant l'examination.

LA COUR: Donc, vous avez pas demandé cette question d'abord à Madame St. Lewis?

C'est-tu ça le résultat que j'ai -- est-ce qu'il y avait des courriels entre la ---

M. RANCOURT: C'est vrai mais, dans le feu de l'action, c'est la première fois que je faisais une telle examination. Pour moi, c'était évident que c'était demandé dans le 'Notice of Examination', que j'ai demandé ---

MR. DEARDEN: No, no, no, no, no.

M. RANCOURT: --- que tout -- ça, je trouve dérespectueux ce que Monsieur Dearden vient de faire. Il vient de dire à haute voix: « No, no, no, no. » et ça je trouve ça dérespectueux, monsieur le juge. Je vous demanderais de demander à Monsieur Dearden de ne pas faire ce genre de choses.

LA COUR: Bon, je pense que ça serait un bon point, Maître Dearden, de -- même si vous êtes

pas d'accord, vous aurez votre temps.

Si c'est fausse, une soumission, bon, vous pouvez objecter mais on devrait ---

M. RANCOURT: Et ça, monsieur le juge ---

LA COUR: --- garder le respect entre vous deux.

M. RANCOURT: --- c'est le genre de comportement qu'on ---

LA COUR: Non. Non.

M. RANCOURT: --- pourra parler quand on va parler des coûts; n'est-ce pas?

LA COUR: Non.

M. RANCOURT: Parce que y faut en parler dans les deux sens.

LA COUR: Les deux -- c'est ça. Exactement.

M. RANCOURT: Merci.

Alors, pour revenir, donc, j'ai demandé que tout soit produit.

Vous voyez à la Question 32, je l'ai déjà lue:

« I have invited you. Is it your choice to provide documents you have brought that you are prepared to disclose and to produce at this time period? Let's move on. »

Et plus tard, je dis: Donnez-moi tout.

Alors, c'était demandé le plus clairement possible.

LA COUR: Là, je vais changer mon -- je vais changer mon -- ma décision sur un point.

M. RANCOURT: Oui?

LA COUR: Est-ce que vous pouvez me donner une copie de la 'Refusals Chart'?

M. RANCOURT: Ha ha ha!

LA COUR: Parce que c'est plus -- à place de ---

M. RANCOURT: Vous voyez que vous pouvez changer vos décisions, monsieur le juge.

LA COUR: Ah, bien, des fois. Des fois.

J'admets l'erreur.

M. RANCOURT: Et je peux donner aussi à Monsieur Dearden, s'il veut bien.

LA COUR: Ah non, ça -- c'est pas dans ma décision, la 'Refusals Chart' -- le 'Refusals Chart'.

M. RANCOURT: Ah! Excusez-moi.

LA COUR: Toi, t'avais -- m'avais donné une copie du ---

M. RANCOURT: Ah! Je reprends ça -- non, je vous ai donné la mauvaise chose.

LA COUR: Oui.

M. RANCOURT: Excusez-moi. Ça c'est une inattention de ma -- de ma -- de ma part. C'est juste que la pile est -- commence à être grande, c'est tout.

Alors, voici. Maintenant c'est la bonne chose.

LA COUR: O.k.

M. RANCOURT: Donc, ma -- ma position et je l'ai exprimée clairement dans le 'transcript' c'est que j'avais demandé dans le 'Notice of Examination' toutes les choses ---

LA COUR: Vous êtes à quelle -- quelle question, là?

La question numéro 1 a été répondue que il y a aucune courriel. Donc, c'est ça.

M. RANCOURT: Oui, elle est répondue ---

LA COUR: Donc ---

M. RANCOURT: --- mais c'est contesté et je

pense que mon évidence est très forte parce que mon évidence repose sur un expert-témoin et je veux maintenant regarder l'évidence de cet expert-témoin.

LA COUR: Non, non.

Bien, ça c'est une question pour procès. Ça c'est une question pour procès.

Si vous avez raison, c'est pas pour -- on n'est pas pour avoir des procès sur chaque question. Vous avez eu une réponse, peut-être c'est vrai, peut-être c'est pas vrai.

M. RANCOURT: Je pense que si ---

LA COUR: Le juge de procès y décidera ou elle décidera.

MR. DEARDEN: Your Honour ---

M. RANCOURT: Je pense ici ---

MR. DEARDEN: Your Honour, Mr. Rancourt knows that you've also ruled that the 'expert report' as he calls it ---

THE COURT: Is not admissible.

MR. DEARDEN: --- is not admissible because it doesn't meet the *Mohan* criteria and he's alluded to Louis Béliveau's so-called 'expert affidavit' not once but twice this morning knowing that you've ruled it inadmissible.

M. RANCOURT: Mais, monsieur le juge, vous l'avez -- les raisons que c'était pas inadmissible avant c'est deux choses: y avait pas de mention de son expertise Outlook. Y a un deuxième affidavit où il explique en détail son expertise Outlook.

Et, deuxièmement, c'était pas pertinent parce

que c'était pas pertinent au point qui était soulevé dans la motion avant et je vous dis que cet affidavit est pertinent exactement aux points qui sont soulevés maintenant ---

LA COUR: Oui, oui mais ---

M. RANCOURT: Parce que ---

LA COUR: Monsieur Rancourt -- Monsieur Rancourt, vous demandez une question: Est-ce qu'il existe un tel courriel?

Vous recevez une réponse sous serment disant que, non, il existe pas de cet -- de courriel. Donc, selon vous, c'est fausse cet argument -- cette réponse.

M. RANCOURT: Oui.

LA COUR: Mais là, de poser la question une deuxième fois: Mais c'est pas vrai que vous l'avez envoyé à ---

M. RANCOURT: Je ne ---

LA COUR: Ça donne rien de ---

M. RANCOURT: Je ne veux pas poser la question une deuxième fois ---

LA COUR: Même question.

M. RANCOURT: --- monsieur le juge.

Permettez-moi, avec tout respect, de corriger cette notion ---

LA COUR: Oui.

M. RANCOURT: --- que vous avez. Je demande une production de ce courriel et de tous les courriels.

LA COUR: Non, mais on est comme une -- si y a pas de courriels, on peut pas les produire. C'est ---

M. RANCOURT: Mais je peux prouver qu'il y a un courriel en -- si on regarde pendant quelques minutes l'affidavit de mon expert.

LA COUR: Non. Non, non, non.

C'est pas l'approche ici parce que, moi, j'ai déjà décidé que cet expert n'est pas un expert et puis, de toute façon, ça c'est des questions pour la juge ou le juge ou la juge de procès pour savoir est-ce que la réponse a été vraie ou faux.

Donc, ça c'est les questions -- mais vous avez eu la réponse. Ici, des refus c'est des questions si le témoin refuse de répondre. Vous avez eu une réponse. Selon vous, c'est pas vrai. Vous voulez prouver que c'est pas vrai mais c'est pas ma fonction ici de -- de ---

M. RANCOURT: Monsieur le juge ---

LA COUR: --- de rendre la décision où est-ce que c'est ---

M. RANCOURT: Ici, aujourd'hui ---

LA COUR: Oui?

M. RANCOURT: Ici, aujourd'hui, c'est ma seule chance d'avoir des productions de tous les courriels entre l'Université d'Ottawa et Monsieur Dearden. C'est ma seule chance et la façon d'établir qu'il y a de tels courriels, c'est de montrer qu'il y en a un qui existe et qui est vrai et que, donc, il doit en avoir d'autres.

Et je les ai demandés, on refuse même de me -- de me donner celui qui est -- qu'on m'a donné par accident.

On va me dire que Outlook, de toute pièce, a créé une date complètement artificielle, une heure artificielle, quelqu'un qui a envoyé quelque chose de façon artificielle deux ans plus tard.

On est -- on propose une explication complètement loufoque de ce type-là et on veut pas me donner le courriel en question. Et, moi, je vous dis que si on regarde pendant quelques minutes ce courriel, sa structure, l'évidence de mon expert, vous allez voir que c'est un vrai courriel et vous allez donc avoir une chance d'ordonner que tous ces courriels-là me soient donnés. C'est ma seule chance d'obtenir découverte sur ces courriels-là. Voilà ma position, monsieur le juge.

LA COUR: O.k.

M. RANCOURT: Donc, est-ce qu'on peut regarder le -- l'affidavit de mon expert ---

LA COUR: Non.

M. RANCOURT: --- pendant quelques instants?

LA COUR: Non, c'est pas -- c'est pas pertinent. C'est pas pertinent parce que j'ai pas à décider cette question ---

M. RANCOURT: Mais vous pouvez pas décider si c'est pertinent sans voir de quoi il s'agit.

LA COUR: Non, vous avez le droit de poser les questions, vous avez les réponses pis, si c'est des menteries, bon, c'est des menteries. Il faut le prouver des menteries.

M. RANCOURT: O.k. J'entends votre décision mais je -- je m'objecte à cette décision de

trouver que quelque chose n'est pas pertinent sans regarder de quoi il s'agit et je retiens mon -- mon droit d'aller en appel de ça.

LA COUR: Non, la raison pour la -- ma décision c'est que la question a été répondue niant qu'il y avait un courriel.

Vous l'avez pas demandé s'il y avait d'autres courriels. C'est ça vous cherchez d'autres courriels. Il y a une obligation sur un Demandeur de produire toutes les documents pertinents à une cause dans l'Affidavit de documents.

Ça, ils l'ont fait. Là, vous avez répondu: Est-ce qu'il y a un courriel? La réponse est: Non.

Donc, c'est une question, selon moi, pour procès.

Alors, Mr. Dearden, do you have any other ---

M. RANCOURT: Vous ---

THE COURT: --- comments on this ---

M. RANCOURT: Vous ---

THE COURT: --- issue?

M. RANCOURT: Bien, je -- pourquoi Monsieur Dearden peut en avoir maintenant?

LA COUR: Bon.

MR. DEARDEN: You were dealing with the refusal one by one.

M. RANCOURT: Je ne comprends pas.

THE COURT: The refusal one by one.

M. RANCOURT: Non, non, non, non, non, non, non. Moi, chu pas d'accord.

LA COUR: O.k.

M. RANCOURT: On les fait tous et, ensuite, il peut répondre.

Je ne vais pas faire une à la fois parce que j'ai -- je crois que c'est une injustice procédurale de procéder comme ça.

LA COUR: Bien, moi, je suis sur la Question 1. That's the one you -- c'est ça la question qu'on fait là.

M. RANCOURT: Non, mais c'est pas que la Question 1, c'est la Question 9 et la prochaine c'est le paragraphe 5 du 'Notice of Examination' et la prochaine c'est le paragraphe 6 ---

MR. DEARDEN: Well, we're looking at Question 1. Issue 1, Mr. Rancourt.

M. RANCOURT: Issue 1.

THE COURT: In your Refusals Undertaking.

M. RANCOURT: Issue 1, voilà.

THE COURT: E-mails ---

M. RANCOURT: Oui.

LA COUR: Le courriel qui revient:

« I want to know what you're prepared to produce ... »

M. RANCOURT: Oui.

LA COUR:

« ... e-mail.

A. There's no such e-mail."

MR. DEARDEN: And then she explains what it is, Your Honour.

M. RANCOURT: Monsieur le juge, ---

MR. DEARDEN: So that's the only point that I'll make.

M. RANCOURT: --- est-ce que Monsieur Dearden

peut attendre son tour?

MR. DEARDEN: It's an Outlook calendar appointment.

M. RANCOURT: Je m'objecte à ceci.

MR. DEARDEN: She sent it -- she sent it to -- to -- back to me when I asked to print it out ---

M. RANCOURT: Objection.

MR. DEARDEN: --- to produce it and that's where it came from and he makes up these conspiracy theories that there ---

M. RANCOURT: Objection.

MR. DEARDEN: --- that there's these -- these other e-mails.

Pure speculation. Pure fishing. And he's got his answer with the explanation about how this happened and then he puts in somebody called 'Louis Béliveau' -- don't know ---

M. RANCOURT: Objection.

MR. DEARDEN: --- don't know who he is, whose ---

M. RANCOURT: Pourquoi est-ce qu'il peut faire son point maintenant?

MR. DEARDEN: --- whose affidavit was rejected. It was rejected.

LA COUR: O.k. Bien là, je vois pas -- moi, je vois pas d'autres choses pour moi à faire. C'est ça que -- si y -- t'as eu une réponse qu'il n'y a pas quelque chose, on peut pas prouver un négatif.

M. RANCOURT: On peut prouver en probabilité que ce courriel était vrai et pour le regarder ---

LA COUR: Mais ça c'est une question pour procès.

C'est pas une question pour ici, pour moi à décider.

M. RANCOURT: Alors, juste -- avant de continuer au 'Issue 2'.

LA COUR: Oui.

M. RANCOURT: J'aimerais signaler que je trouve ça injuste que, pour une technicalité, vous dites: « Vous avez pas poser la question. »

LA COUR: Non, non, non, c'est pas sur une technicalité.

M. RANCOURT: Je l'ai ---

LA COUR: Non, non, c'est pas ça.

M. RANCOURT: Je l'ai mis ---

LA COUR: Non, non.

M. RANCOURT: Je l'ai mis dans mon 'Notice of Examination' ---

LA COUR: Oui, oui. Non, non, non, non.

M. RANCOURT: --- j'ai demandé ---

LA COUR: Non, non.

Pour clarifier, c'est pas pour ces raisons-là. Pas du tout. Pas pour une raison technique, du tout.

C'est parce que vous l'avez déjà posé la question: Est-ce qu'il y a un courriel?

Non, il y a une réponse disant que: « There is no such e-mail. »

Donc, what more can -- can be said or can I decide?

Selon vous, c'était une réponse qui est fausse. That's a decision for trial judge to determine.

M. RANCOURT: O.k.

Alors, on peut passer -- donc, je -- je m'objecte et on -- parce que j'ai posé la question par rapport aux autres courriels. Ça c'était celui qui n'existe pas mais, moi, je pense qu'il en existe d'autres et on ne les ---

LA COUR: Ça c'est laquelle -- quel paragraphe? Quelle question?

M. RANCOURT: Je -- c'est, par exemple, sur la première page, paragraphe 5. J'ai demandé tous les courriels échangés entre l'Université d'Ottawa et la Plaignante ou son avocat. Et on m'a jamais donné aucun de ces courriels-là.

MR. DEARDEN: The assumption there, Your Honour, is that there are other e-mails.

M. RANCOURT: Bien sûr.

MR. DEARDEN: It's not a question, it's fishing. "Bien sûr", no.

M. RANCOURT: Alors, si -- si on ordonne qu'ils soient produits et qu'il y en n'a pas, ça va être très facile de les produire. Ça sera pas de travail du tout. Il y a aucun préjudice attaché à ça. C'est aussi simple que ça, monsieur le juge.

Il y a des raisons de croire qu'il y en a, pourquoi pas les produire?

MR. DEARDEN: No, maybe I'm misunderstanding the translation ---

M. RANCOURT: Monsieur le juge, pourquoi est-ce que Monsieur Dearden ---

MR. DEARDEN: No, I am not letting you put ---

M. RANCOURT: --- est en train d'avoir une discussion avec nous?

MR. DEARDEN: --- misrepresentations on the record.

M. RANCOURT: Il n'est pas en train de faire une objection, il parle sans cesse pendant mes présentations.

THE COURT: Well, just to clarify, if there's an error, if I'm being introduced in error, that's all -- only reason for objections.

MR. DEARDEN: So, Your Honour ---

M. RANCOURT: Assoyez-vous, Monsieur Dearden.

MR. DEARDEN: --- I ---

THE COURT: I'll allow him to make his comments. I allow ---

MR. DEARDEN: I may have misunderstood the translation but I understood Mr. Rancourt to be submitting to the Court that, somehow, there's other e-mails that have not been produced in the Affidavit of documents which is four volumes -- five volumes ---

THE COURT: I think he wants to ask that question. Il veut demander cette question. Il l'a pas fait dans sa -- he wants to ask if there are other e-mails between Allan Rock and -- and yourself.

M. RANCOURT: C'est sûr ---

THE COURT: It's the question he wants to ask.

MR. DEARDEN: There never was an e-mail from Allan Rock to me.

THE COURT: That's what I thought the answer was but ---

MR. DEARDEN: Never.

And that's all he's asking in Issue number 1.

M. RANCOURT: C'est pas de l'évidence qu'il est en train de vous dire.

THE COURT: He's thinking: Are there others? Okay, are there other e-mails? Are there other e-mails that -- other than this ---

MR. DEARDEN: They came from Professor St. Lewis.

M. RANCOURT: Est-ce qu'on peut arrêter les interventions de Monsieur Dearden, s'il vous plaît, monsieur le juge?

Je demande ---

LA COUR: Mais c'est de clarifier les faits.

M. RANCOURT: J'ai fait une objection.

LA COUR: O.k. Allons-y. Allons-y.

M. RANCOURT: O.k.

Donc, je crois que j'étais clair dans ma Notice d'examination et je croyais que j'avais bien posé la question en exigeant que tous les documents soient produits et ne le mettant dans ma Notice.

Si pour une raison technique la Cour trouve que je n'ai pas posé la question, alors, oui, je demande de pouvoir poser la question.

LA COUR: Quelle question?

M. RANCOURT: Est-ce qu'il y a des courriels entre l'Université d'Ottawa et Monsieur Dearden?

LA COUR: O.k.

M. RANCOURT: Et je veux que vous les produisiez.

THE COURT: Any objection to answering that

question?

Now, Ms. St. Lewis, not by yourself 'cause you're not a witness but from Ms. St. Lewis answering that question: Are there any e-mails between Mr. Rock and counsel for -- for Ms. St. Lewis?

MR. DEARDEN: I have only this concern, Your Honour. I don't have concern with the answer and I'll tell you as an Officer of the Court there isn't, he's making it up and it's ---

THE COURT: No, but there would -- that would be an answer. He seems to think there are.

MR. DEARDEN: But I'm concerned about the precedent, Your Honour.

THE COURT: Okay.

MR. DEARDEN: Okay? This wasn't asked in the discovery. This -- this Defendant is represented by counsel. He gets legal advice.

M. RANCOURT: Faux.

MR. DEARDEN: He comes here ---

M. RANCOURT: Faux.

MR. DEARDEN: He gets -- yeah, right.

He comes here ---

M. RANCOURT: Là, il induit la Cour en erreur.

MR. DEARDEN: The only time he's self-represented and he knew what he was doing in that examination for discovery and I'm concerned we go down a very slippery path if we let him have the answer that I just gave the Court as an Officer of the Court then you can just imagine, Your Honour, how he's going to keep on shoving this in my face and in the Court's face about

the fact: Well, just let me do it because I'm a self-rep.

No, no, no. This is one of the most skilled litigants in this city. He's one of the most litigious litigants in Labour Law and in the 20 plus motions that have gone on in this particular case.

He's not -- he gets legal advice behind the scenes. He's put an affidavit in -- he goes to Law Help, for instance, and he tells me it's 'faux'.

I know who's 'faux'.

He got an affidavit that he goes to Law Help ---

M. RANCOURT: Est-ce que c'est de l'évidence, monsieur le juge?

Je veux dire c'est ---

THE COURT: Okay, I ask the -- moi, j'ai à demander les ---

M. RANCOURT: Non, mais vous avez demandé: « Est-ce qu'il a une objection à ce que la Plaignante mette en évidence que il y a pas de courriels? » et il a refusé de vous répondre. Il a fait un espèce de ---

LA COUR: Non, non.

M. RANCOURT: --- 'smoke screen' qu'on dit en anglais, il a refusé de vous répondre.

LA COUR: Mais selon ---

M. RANCOURT: Moi, j'aimerais bien qu'il réponde à la question.

LA COUR: Selon -- non, non, non.

M. RANCOURT: Est-ce que -- est-ce que il a une objection que la Plaignante réponde à la

question pour que ça soit en évidence ---

THE COURT: There's an objection to -- si j'ai bien compris -- he is objecting to the -- there's potentially further motions from this and further delay and it's ---

M. RANCOURT: Ça c'est de la ---

THE COURT: Is it relevant?

M. RANCOURT: Ça c'est de la -- de la spéculation pure et simple.

THE COURT: Well, it's maybe speculation on both sides, that's -- that's the point I think he's making but ---

M. RANCOURT: Mais ---

THE COURT: --- move on. I've understood your point.

M. RANCOURT: O.k.

Donc, je demanderais que vous preniez ça en considération le fait qu'il a refusé votre demande, que vous preniez ça comme une induction négative de sa part. Il refuse de mettre en évidence qu'il y a pas de courriel entre lui et l'Université d'Ottawa.

Je demande que ça soit considéré par induction négative.

MR. DEARDEN: Well, that's -- I'm sorry, Your Honour, you've heard my answer as an Officer of the Court. There's no negative deduction to be made.

It's totally unfair for Mr. Rancourt to have said what he just said. You have -- like, I'm not going to get sucked in to being ---

M. RANCOURT: Pourquoi ---

MR. DEARDEN: --- somebody that's giving evidence ---

THE COURT: No, no, no.

MR. DEARDEN: --- I've gave you my answer ---

THE COURT: No, no.

MR. DEARDEN: --- as an Officer of the Court ---

THE COURT: Yes, that's -- that's correct.

MR. DEARDEN: --- to your question and the concern about the precedent that would be set if he were allowed to get away with this.

M. RANCOURT: Alors, si j'ai bien compris la réponse de Monsieur Dearden -- pour que ça soit très clair -- est-ce que Monsieur Dearden a reçu le courriel d'Allan Rock du 30 mars; oui ou non?

THE COURT: No, no, no, no, no, no, no. That's not the -- that's already been answered.

Ça, ça déjà été répondu.

M. RANCOURT: Par la Plaignante.

LA COUR: Oui.

M. RANCOURT: Mais Monsieur Dearden veut ---

LA COUR: Non, non, non, non, non.

M. RANCOURT: --- veut se proposer en évidence.

LA COUR: Non, non, non, non, non, non, non.

C'est pas ça qu'il a fait. Non, non, ça c'est -- juste pour être clair, c'est pas ça qu'y a fait, c'est moi j'y ai demandé si y avait objection que y aurait une autre question que vous avez oublié de le demander, si j'ai bien compris, dans votre examen au préalable.

Je pensais peut-être que ça serait plus vite pour la répondre que de -- que -- allez, ça c'était mes pensées mais j'ai entendu que, non,

il -- c'est un précédent ---

M. RANCOURT: Vous avez entendu ---

LA COUR: Que ça c'est un 'slippery slope' pour un -- ça pourrait être un autre ---

M. RANCOURT: Je ---

LA COUR: C'était une pensée de ma part pour ---

M. RANCOURT: Ça serait tellement ---

LA COUR: --- aller devant avec l'affaire.

M. RANCOURT: Ça serait tellement facile pour eux de simplement répondre à la question mais ils refusent de le faire. Vous le voyez vous-même, monsieur le juge.

(COURTE PAUSE/SHORT PAUSE)

LA COUR: O.k., bien, on est le temps de la pause vraiment du matin.

Je vais vous accorder 15 minutes mais qu'on revienne and that's -- ça, ça -- ça va être le temps parce qu'on est déjà -- le une heure que t'avais, on a commencé à 10h15, on est rendus à une heure et demie parce qu'on est rendus à 11h45.

Donc, vous avez eu une heure et quarante-cinq minutes et puis on avait fixé deux heures en total.

Donc, je vous donne un autre 15 minutes de -- de ce qu'on dit en anglais 'focus', 'focus the argument' or refer me -- tu peux me référer à des -- des points spécifiques qui soient dans votre factum parce que j'ai ça par écrit aussi et puis on va prendre une pause de 15 minutes. And, Mr. Dearden, I'm going to cut you down to 45 minutes in response because I'm trying --

we're going to get three -- you've had an hour
-- ça va être deux heures pour vous puis 45
minutes pour Monsieur Dearden ---

M. RANCOURT: C'est pas surtout moi qui a parlé
c'est ---

LA COUR: Comprenez-vous?

M. RANCOURT: --- c'est surtout Monsieur ---

LA COUR: Donc ---

M. RANCOURT: Monsieur le juge?

LA COUR: Donc ---

M. RANCOURT: O.k.

LA COUR: --- on va prendre la pause du matin
mais ---

M. RANCOURT: Oui.

LA COUR: --- on va procéder avec ça comme ça.
O.k. C'est bien.

THE COURT CLERK: Veuillez vous lever. All
rise.

THE REGISTRAR: The Court is in recess. La
session est levée pour 15 minutes. For 15
minutes.

--- L'audience est suspendue à 11h44

--- L'audience est reprise à 12h01

THE COURT CLERK: Alors, s'il vous plaît,
veuillez vous lever. Please rise.

THE REGISTRAR: This session is reconvened.
Please be seated. La séance est reprise.
Veuillez vous asseoir.

LA COUR: Monsieur Rancourt?

M. RANCOURT: Monsieur le juge, alors, je veux
simplement mettre sur le procès-verbal que je
suis contre la notion que je puisse faire sept

des huit 'issues' dans 15 minutes et que je puisse présenter mes arguments pourquoi la production -- les ordres de production sont nécessaires dans 15 minutes.

Donc, je -- j'estime que c'est pas juste et que je n'aurai pas l'occasion de faire ce que j'ai à faire.

Mais si vous tenez à cet ordre-là, je demanderais qu'il n'y ait pas d'interruptions pendant que je parle pour 15 minutes et je vais ---

LA COUR: Il y aura pas de interruptions mais je tiens avec l'ordre.

M. RANCOURT: Merci.

Donc, je vous amène à la page -- je vous amène à la page 9 de mon factum.

Alors, à la page 9 de mon factum, vous voyez il y a une section qui s'intitule « Insufficiency of Plaintiff's Searches » et dans cette section-là je argue que aucun des documents qui auraient dû être produits dont on connaît l'existence n'ont été produits. Aucun et c'est une douzaine de documents environ.

Alors, je vous amène -- pour montrer ces documents-là pour que vous compreniez la situation, monsieur le juge, je vous amène à mon 'Motion Record' à l'onglet 2(k).

Si vous pouvez garder le factum ouvert et aller simplement au -- au 'Motion Record' à l'onglet 2(k)?

Alors, monsieur le juge, juste pour expliquer, il y a 17 pages malheureusement qui sont pas

numérotées là dans cet onglet-là et cet -- cet onglet, je veux juste vous expliquer ce que c'est.

Ça c'est des pages qui viennent d'une demande d'accès à l'information qu'a fait le Syndicat des étudiants -- c'est-à-dire, Madame Gervais -- par rapport à la question du Rapport St. Lewis. Et ces documents ont été rendus publics par le Syndicat des étudiants et ce document est une des pièces centrales de l'action parce que, basé sur ces documents, j'ai pu écrire mon blog et les opinions exprimées dans mon blog sont basées sur l'existence de ce document, en partie. Donc, c'est un 'exhibit' central à l'action. C'est extrêmement pertinent. Il y a aucune question de la pertinence de ce document-là; o.k.?

Et les pages sont représentées exactement telles qu'elles ont été mis à l'Internet quand on -- elles ont été publiées par le Syndicat des étudiants.

Et si on regarde ces pages-là, je vous amène à la toute première -- si on compte trois pages -- malheureusement, elles sont pas numérotées mais si on compte trois pages, il y a un petit '18' en haut; vous voyez ça?

LA COUR: Oui.

M. RANCOURT: À la troisième page?

Alors, sur cette page-là, si vous allez en bas de la page, vous allez voir un courriel, monsieur le juge, qui est un courriel de Robert Major qui était le Vice-recteur académique

à Joanne St. Lewis et à Henri Wong.

C'est un courriel, donc, qui -- qui est dans le document -- un des documents centraux dans l'action qui parle du rapport et, donc, qui est sans aucun doute pertinent. C'est un courriel de Robert Major à Joanne St. Lewis et ce courriel n'a pas été produit dans l'affidavit de Madame St. Lewis.

Ensuite, je vais -- quand vous êtes prêt, monsieur le juge, je vais aller à la onzième page dans ce même 'exhibit'. Donc, malheureusement, il faut compter 11 pages mais il y a un petit '15' encerclé en haut de la page. Et ça, c'est un document très important. Est-ce que vous êtes au -- à la page -- à la onzième page où il y a un petit '15' d'encerclé?

LA COUR: O.k., copie -- courriel entre Madame St. Lewis et Robert Major?

M. RANCOURT: Oui.

Et vous voyez que il y a du noir. On a enlevé la date et on a enlevé une certaine information. Et la raison pour ça c'est que la demande d'accès d'information, l'Université a le droit de bloquer certaines informations et pas d'autres. Et ça c'est les documents tels que produits par l'Université qui ont ensuite été publiés par l'Association des étudiants.

Et, donc, je ne connais pas la date mais je sais que ça doit être une date proche des autres courriels dans la même chaîne.

Ce courriel entre Madame St. Lewis envoyé à Robert Major et à Allan Rock et à plein d'autres

personnes, ce courriel n'a pas été produit par la Plaignante.

C'est un courriel absolument pertinent, sans aucun doute, qui n'a pas été produit par la Plaignante.

Et maintenant, si vous permettez, je vais à la 15^{ième} page de ce même document, ce même onglet (k) -- et, donc, je demande, par exemple, qu'il y ait production de ce courriel avec toutes les informations.

Évidemment, je demande ça. Je veux tous les courriels, monsieur le juge.

Ensuite, nous comptons jusqu'à la 15^{ième} page, si vous pouvez être patient avec moi, monsieur le juge? Il y a un petit '4' encerclé en haut de la page quand on arrive à la 15^{ième} page.

LA COUR: O.k.

M. RANCOURT: Et vous voyez, en bas de la page, il y a une troisième courriel. Ce courriel est envoyé de Robert Major à Joanne St. Lewis et le sujet c'est: « The SAC Report ».

Rien ne peut être plus pertinent que ce courriel et ce courriel n'a pas été produit dans l'Affidavit des documents de la Plaignante et je demande ce courriel et tout ce qui est attaché à ce courriel. Un courriel complet.

Ensuite, on peut aller à la prochaine page, monsieur le juge, qui est la page -- la 16^{ième} page de ce petit document et vous voyez c'est un courriel de Joanne St. Lewis à Robert Major, Allan Rock et deux autres personnes, Bruce Feldthusen, et cetera, envoyé le 20 mars 2009.

5 Ce courriel est, de toute évidence, dans le document central de l'action -- un des documents centraux de l'action, entièrement pertinent. Il n'a pas été mentionné dans l'Affidavit des documents de la Plaignante.

Elle a refusé d'inclure ce courriel.

10 Ensuite, on peut aller au 'transcript' -- le prochain point. Là, je suis dans mon affidavit, je suis au paragraphe 22 dans mon affidavit. Il y a la question des courriels qui ont été envoyés et reçus entre Hazel Gachoka et la Plaignante.

15 Donc, je suis au paragraphe 22 de mon -- de mon factum et je vous amène à l'onglet 2(e) de mon 'Motion Record' et je vais à la page 6 de cet onglet-là. Et je vais à la ligne 13/14 et Monsieur Dearden annonce que cette demande d'obtenir tous les courriels entre Madame Gachoka et la Plaignante n'est pas pertinent et il refuse de fournir ces courriels alors que ce sont des courriels échangés à propos du rapport -- je présume -- à propos du rapport et qui seraient pertinents et on a refusé de fournir ces courriels que je n'ai pas, que je ne peux pas avoir et qui sont pertinents.

20 Tous les courriels qui ont pu être échangés entre Madame Gachoka et la Plaignante n'ont pas été produits, n'ont pas été signalés.

25 J'ai découvert l'existence de ces courriels-là indépendamment.

30 Ensuite, si on tourne à l'onglet 4 de mon 'Motion Record' -- oui, à l'onglet 4, c'est l'affidavit

de Madame Gervais où elle a mis en exhibit un courriel. Et vous allez au premier exhibit, l'Exhibit (a), et vous voyez que ce courriel est un courriel que j'ai -- dont j'ai connu l'existence grâce à Madame Gervais et qu'elle a mis dans cet affidavit pour cette motion. C'est un courriel -- est-ce que vous êtes à l'Exhibit (a) du -- de l'affidavit de Madame Gervais à l'onglet 4, monsieur le juge?

LA COUR: Oui.

M. RANCOURT: O.k.

Alors, vous voyez que c'est un courriel entre la Plaignante, Madame St. Lewis, et Mireille Gervais qui a comme adresse courriel: case.cresa -- qui est le nom de son organisme au Syndicat des étudiants.

C'est un courriel, donc, directement entre Madame St. Lewis et Mireille Gervais qui est absolument pertinent au cas parce que ce courriel dit:

« I have been remiss in not introducing myself before ... »

et elle parle de son rapport.

C'est donc un courriel à propos de ce rapport.

Son rapport est un exhibit central dans l'action. C'est un courriel à propos du rapport et ce courriel n'a pas été produit par la plaignante, n'a pas été mentionné par la Plaignante dans son Affidavit de documents.

Tous les documents que j'ai pu découvrir aucun ont été mentionnés et je vous signale, monsieur le juge, que Monsieur Dearden va dire que ce courriel n'est pas pertinent parce qu'il a été

5
envoyé après que le rapport a été soumis et je
-- j'avance la soumission que c'est un argument
ridicule parce que c'est un faux argument. Les
choses doivent arriver avant quand ce sont des
causes aux actions. Il faut qu'il y ait une
relation causale.

10
Si on parle après de quelque chose qui est -- qui
est arrivé avant, alors, c'est pertinent à la
chose qui est arrivée avant. Pour que la date
uniquement serve à annuler quelque chose, il
faut que y ait une relation causale.

15
Ça c'est un cas où on parle de quelque chose qui
est pertinent qui est arrivé avant mais on en
parle après. C'est donc un courriel
complètement pertinent qui parle directement
d'un exhibit central dans l'action et qui n'a
pas été produit par la Plaignante.

20
Ensuite, je vais au paragraphe 25 -- je suis le
paragraphe 25 dans mon factum, là, et je vous
amène à l'onglet -- dans l'affidavit -- dans mon
affidavit -- dans mon 'Motion Record', je vais à
l'onglet 2(i).

25
Vous voyez, à l'onglet -- dans mon affidavit, il
y a cette lettre qui a été envoyée de monsieur
Seamus Wolfe qui était le Vice-président aux
affaires universitaires à la Fédération des
étudiants à -- non, c'était envoyé à monsieur
Seamus Wolfe et c'était envoyé par Robert Major
qui était le Vice-recteur académique à l'époque
30
à l'université et vous voyez dans cette lettre
qu'il y a en copie conforme Joanne St. Lewis à
la deuxième page de cette lettre. Il y a en

copie conforme Joanne St. Lewis.

MR. DEARDEN: Sorry, what tab?

M. RANCOURT: Je suis à l'onglet 2(i).

LA COUR: 2(e)?

M. RANCOURT: (i), (i), 2(i).

LA COUR: 2(i)? Excusez.

M. RANCOURT: Vous êtes -- vous êtes pas au bon -
- au bon onglet, monsieur le juge?

LA COUR: Donc, 2 ---

MR. DEARDEN: 'i'?

THE COURT: Yes.

M. RANCOURT: 'i', oui.

Oui, 'i' en français c'est 'i' en anglais.

LA COUR: Exactement.

M. RANCOURT: Excusez-moi pour la confusion mais
est-ce que maintenant vous êtes à la bonne ---

LA COUR: Oui.

M. RANCOURT: --- le bon onglet?

Vous voyez cette lettre envoyée à Monsieur Wolfe?

LA COUR: Oui.

M. RANCOURT: Et vous voyez que Joanne St. Lewis
est en copie conforme à la deuxième page?

LA COUR: Oui.

M. RANCOURT: Ça c'est une lettre à propos du
rapport de Madame St. Lewis, à propos de la
nécessité d'obtenir des données pour compléter
un rapport meilleur.

C'est une lettre directement pertinente à cette
action. La date de la lettre est pertinente, le
contenu de la lettre est pertinent. C'est
central à l'action. C'est un des -- ça se
rattache à un des documents centraux à l'action

et cette lettre n'a pas été divulguée dans l'affidavit des documents de la Plaignante. J'ai posé beaucoup de questions sur cette lettre-là et qui sont dans le 'transcript' que j'ai mis -- je vais juste pour -- pour être complet, je vais juste dire que c'est dans le 'transcript' à la page 91, la question 193.

Alors, on peut aller au 'transcript' si vous voulez. C'est l'onglet 2(e), le 'transcript' et je vais à la page 91 de cet onglet et je vais à la question 173, à la ligne 8:

« And do you recognize this letter of March 24th that was sent from Robert Major to Seamus Wolfe who was a Vice-President of the Student Association at the time?"

Puis elle répond:

"I can be perfectly honest and say, until you gave it to me, I don't really recollect it. I recognize that I'm cc-ed in it and I know that it's in -- it looks responsive from Robert Major to my e-mail ..."

et cetera, et cetera.

Monsieur le juge, la Plaignante est en train de dire qu'elle ne se souvient pas d'une lettre qui avait été envoyée par le Vice-recteur académique de l'université, la personne -- la deuxième personne la plus puissante dans l'institution -- qui la concernait directement par rapport à un rapport qu'elle devait faire, qu'y essayait de demander des données pour qu'elle puisse faire un deuxième rapport. Elle est en train de nous dire qu'elle se souvient pas d'une telle lettre.

Je dis que c'est pas très probable et elle n'a pas produit, elle a pas recherché cette lettre et elle l'a pas produit dans son Affidavit de documents.

En plus, je -- ça c'est le -- je suis en train de faire la section sur tout ce que la Plaignante n'a pas produit.

Si vous allez au paragraphe 27 de mon factum -- au paragraphe 27 de mon factum, je signale que la Plaignante a dit sous serment des mots qui, à mon avis, veulent dire qu'elle n'a pas préparé son propre Affidavit de documents et qu'elle n'en prend pas la responsabilité.

Alors, vous pouvez voir à l'onglet 2(e) de mon 'Motion Record', si on va à la page 240, à la ligne 13 à 17, elle dit -- je vous laisse le temps d'arriver, monsieur le juge.

LA COUR: O.k., à la ligne 17?

M. RANCOURT: À la ligne 13 à 17, on est en train de parler de son -- des documents qui devraient être donnés parce qu'ils sont listés dans son Affidavit de documents dans la cédule A et elle dit:

« I didn't prepare the Index, Monsieur Rancourt so that's why I'm looking at my counsel. I provided my counsel with all the material so that's why you have to get the responses from my counsel with regard to some of those headings but I will look. »

Donc, elle est en train de dire que, ah ben, oui, ça été dit comme ça dans mon affidavit, dans le cédule A, mais c'est pas moi qui ai écrit ça et

puis il faut demander à mon -- à mon avocat. Je
peux même pas questionner de façon profonde.
Et ça c'est un courriel, monsieur le juge, dont
on parle là, c'est un courriel important parce
que c'est une des questions de refus.

C'est un ---

LA COUR: Mais ça -- la réponse ici c'est si ça
existe, tu vas l'avoir une copie.

M. RANCOURT: Oui.

Et la réponse de cette -- de ça, c'est Monsieur
Dearden qui m'a répondu que: « On l'a pas
trouvé ».

Et ça c'est dans une -- une des questions de
refus. Je peux aller au 'Refusals Chart' pour
la trouver là mais ça va prendre un petit
instant mais Monsieur Dearden prétend qu'il ne
peut pas trouver le courriel alors qu'ils m'ont
fourni l'attachement du courriel.

Ils m'ont donné l'attachement et ils m'ont donné
un autre courriel à la place. Ils prétendent
que ça c'est l'attachement qui était sur le
courriel mais ils peuvent pas trouver le
courriel.

Le courriel lui-même -- d'une façon ou d'une
autre, ils ont pu identifier un attachement qui
était attaché au courriel sans trouver le
courriel et ça c'est la question -- là, ça va me
prendre un instant pour trouver ça -- dans la --
dans le 'Refusals Chart' -- c'est le 'Issue 8',
donc, la question sens large numéro 8 où je
demande:

« Could I have the original e-mail which this

is intended to be because your Index of documents says that your Tab 13 should be your e-mail to her of November 19th, 2008, 10:42. So could I have that e-mail, please?"

Alors, d'une façon magique, ils ont pu dire que il y avait un courriel envoyé exactement à cette date-là mais sans trouver le courriel mais en sachant qu'est-ce qui était attaché à ce courriel-là. Et donc, ils -- ils disent qu'ils vont répondre et, plus bas dans -- sur cette même page, vous voyez, j'écris entre doubles parenthèses:

« In a letter dated July 11th, 2012, Plaintiff counsel states: The Plaintiff has conducted a search of her records and cannot locate the e-mail on a stand-alone basis."

Alors, je vous dis, monsieur le juge, que cet énoncé de l'avocat n'est pas une évidence. Moi, je veux ça en évidence qu'ils ne -- que ce courriel-là n'existe pas. Donc, il y a de l'évidence qu'elle a pas préparé l'affidavit, voilà.

Et puis, ensuite, le prochain point important qui est dans ma motion parce que j'ai dit que ma motion était pour établir que ---

LA COUR: Je vais vous donner du temps -- jusqu'à midi trente.

M. RANCOURT: Je -- c'est pas assez de temps, monsieur le juge, mais je vais faire de mon mieux, de façon la plus efficace possible.

LA COUR: Oui.

M. RANCOURT: Alors, voici, ---

MR. DEARDEN: Your Honour ---

M. RANCOURT: --- je passe maintenant ---

MR. DEARDEN: --- I know you told me not to interrupt ---

THE COURT: Right.

MR. DEARDEN: --- but, again, you know, you give him even more time and he puts on the record, for his next leave to appeal, that ---

THE COURT: It's not enough.

MR. DEARDEN: He's never satisfied. Ever.

THE COURT: Well, that's -- que sera sera on some of these things, you know, in terms of appeals. That's my -- that's not really my concern.

M. RANCOURT: Non, et, monsieur le juge, ---

THE COURT: That'll be somebody else's concern. It might be your concern but -- de toute façon, je veux pas en prendre de votre temps.

M. RANCOURT: Alors, je continue.

LA COUR: Oui, et puis, vous pouvez me référer à votre factum.

M. RANCOURT: Oui.

LA COUR: Je prends des notes parce que ---

M. RANCOURT: Ce que je vais faire, monsieur le juge ---

LA COUR: --- j'ai un record ---

M. RANCOURT: --- je vais ---

LA COUR: --- vous avez fourni un factum que je peux lire avec vos -- vos arguments ---

M. RANCOURT: Oui.

LA COUR: --- et je peux les comprendre. Donc, je l'ai lu votre factum.

M. RANCOURT: Oui.

LA COUR: Donc, je l'ai lu.

M. RANCOURT: Je vais juste aller aux grandes lignes ---

LA COUR: Oui.

M. RANCOURT: --- les plus pertinentes ---

LA COUR: C'est ça. Exactement.

M. RANCOURT: --- de deux autres sections dans mon factum.

LA COUR: Oui.

M. RANCOURT: Alors, la section ---

LA COUR: Je devrais dire un commentaire que la manière vous présentez vos causes présentement, depuis la pause à midi, c'est exactement comme ça qu'on devrait argumenter.

M. RANCOURT: C'est ce que je veux faire depuis le début.

LA COUR: Vous faisiez bien que -- oui. Oui, mais vous l'avez pas ---

M. RANCOURT: Mais il y avait des questions procédurales au début.

LA COUR: Mais c'est de valeur, vous n'avez pas procédé de cette manière les premières deux heures de cette motion.

M. RANCOURT: C'est des questions de justice procédurale.

LA COUR: De toute façon, je vous félicite -- je vous félicite de -- de votre approche.

M. RANCOURT: Merci, monsieur le juge.

LA COUR: Dernièrement. Je devrais dire ça.

M. RANCOURT: Alors, si on passe maintenant à la section (f) comme, je sais pas, 'flaw' en anglais pour pas qu'il y ait de confusion là

avec la traduction, de mon factum, qui est à la page 11 de mon factum ---

LA COUR: Oui.

M. RANCOURT: --- j'aimerais que vous alliez à cette section (f) parce que c'est là que je présente les évidences comme quoi l'avocat de la Plaignante a eu des interférences complètement excessives lors de l'examination.

Et surtout des exemples de ce qu'on appelle en anglais 'directing the witness'.

LA COUR: O.k., mais de -- de moi, est-ce que -- c'est quoi que vous voulez de ça? Parce que ---

M. RANCOURT: Ce que je veux de ça, monsieur le juge, c'est la chose suivante ---

LA COUR: On procède -- oui.

M. RANCOURT: C'est tellement gros ce qui s'est passé, il y a tellement d'exemples et c'est systématique que j'aimerais avoir plus de temps en ré-examination pour compenser et l'abus de processus et la perte de temps que les interventions et les interférences de Monsieur Dearden ont -- ont fait.

C'est ce que je demande et je l'ai demandé dans ma motion. C'est pour ça que c'est pertinent. Mais je veux juste vous montrer quelques exemples parce que c'est vraiment frappant.

Si vous regardez le paragraphe 29, Monsieur Dearden -- et j'ai souligné -- il dirige constamment la Plaignante. Il dit:

« She just told you she doesn't have it. »

Elle répond:

"I don't have it."

Je suis dans le milieu de questionner puis il intervient pour lui dire comment répondre.

Ensuite, le prochain exemple de ça, il dit:

« She just told you she -- she didn't know if it was an e-mail ... »

puis là, elle dit:

"I can't recall the form ..."

Il est en train de la diriger complètement et j'ai des -- j'ai des autorités ici qui disent et que je veux vous montrer qui sont dans mon factum qui disent que l'avocat doit être scrupuleux pour ne pas diriger le témoin et pour ne pas intervenir de cette façon-là.

Scrupuleux. C'est ça les autorités alors qu'il fait le contraire. Il y a -- il y a des interruptions.

Au paragraphe 32, encore une fois, je demande à la Plaignante:

« Do you believe that most of your colleagues and students strive to be non-racist? »

Monsieur Dearden dit:

"How would you know the answer to that?"

Il est en train de diriger et un peu plus bas elle dit:

« I don't know. »

LA COUR: Oui, mais c'est une objection ---

M. RANCOURT: Je lui demande sa croyance.

LA COUR: C'est une objection basée sur: que c'est que va penser le public de telle telle chose?

Est-ce que -- est-ce qu'on connaît qu'est-ce que quelqu'un d'autre pense?

M. RANCOURT: No.

LA COUR: J'imagine c'est cette sorte d'objection.

M. RANCOURT: Oui, je comprends l'objection mais voici, monsieur le juge, il y a une autorité très claire que je vais vous montrer là tout de suite mais vous m'avez donné des contraintes de temps impossibles donc je ne peux pas aller le montrer là mais il y a une autorité très claire qui est *Rothmans* qui dit que on a le droit de questionner le témoin sur ses croyances.

LA COUR: Mais croyance des faits. Croyance des faits.

M. RANCOURT: Oui.

Et c'est un fait pertinent à savoir si les collègues dans son département ---

LA COUR: Dans sa connaissance.

M. RANCOURT: Dans sa connaissance, c'est tout ce que je demande, dans sa connaissance.

Et Monsieur Dearden lui suggère: Bien, tu pourrais pas savoir ça, c'est impossible. C'est pas vrai, on a une opinion, on a une connaissance et puis, donc, elle répond tout de suite:

« I don't know. »

Vous voyez?

Ensuite, un autre exemple ---

LA COUR: Ou dans les croyances religieux des collègues, est-ce qu'on connaît les croyances religieux des collègues?

M. RANCOURT: C'est pas une question ---

LA COUR: C'est-tu pertinent de toute façon?

M. RANCOURT: C'est pas une question de croyances religieuses ---

LA COUR: Non, non ---

M. RANCOURT: --- c'est une question de croyance ---

LA COUR: --- je comprends mais je prends ça comme exemple: Est-ce que -- est-ce que quelqu'un peut être au courant d'une croyance d'un autre tierce partie?

M. RANCOURT: Quelqu'un peut avoir une croyance ---

LA COUR: Est-ce que c'est-tu -- est-ce que c'est pertinent à votre question de ---

M. RANCOURT: Bien sûr que c'est pertinent.

LA COUR: --- diffamation?

De quelle façon?

M. RANCOURT: Bien sûr.

LA COUR: De quelle façon si les collègues sont racistes ou non?

M. RANCOURT: Ah, c'est très ---

LA COUR: Mettons qu'ils le sont ou qu'ils ne le sont pas?

M. RANCOURT: C'est très pertinent ---

LA COUR: Mais de toute façon, cette question c'est: Est-ce que vos commentaires au public général à une personne raisonnable affecteraient dans une manière négative la réputation de Madame St. Lewis?

C'est ça la question. C'est pas la question si les -- les professeurs à l'Université d'Ottawa sont racistes. Peut-être c'est vrai, peut-être c'est pas vrai. J'assume c'est pas vrai mais ...

M. RANCOURT: Mais, monsieur le juge, vous avez -
--

LA COUR: Mais de toute façon c'est ---

M. RANCOURT: --- émis une opinion ---

LA COUR: Non.

M. RANCOURT: Vous m'avez posé une question, vous ne me laissez pas répondre.

LA COUR: Non, non, mais je ---

M. RANCOURT: Vous me demandez comment c'est pertinent, je peux l'expliquer.

LA COUR: Mais je demande que c'est des -- peut-être c'est intéressant pour un académique de savoir ---

M. RANCOURT: Mais laissez-moi répondre ---

LA COUR: est-ce que -- oui, o.k.

M. RANCOURT: --- vous me posez une question.

LA COUR: Oui. Oui, oui.

M. RANCOURT: Vous me demandez en quoi c'est pertinent à la cause.

LA COUR: Oui.

M. RANCOURT: Et vous -- vous -- vous parlez pendant longtemps pour dire que c'est pas pertinent sans entendre pourquoi je crois que c'est pertinent.

LA COUR: Allons-y.

M. RANCOURT: Alors, je -- je demande à le dire pourquoi c'est pertinent.

C'est pertinent parce que la Plaignante demande, dans son 'Statement of Claim', dans sa déclaration, elle dit que elle a souffert à cause de mon blog.

Elle aurait souffert si ça pourrait induire --

une façon qu'elle peut souffrir c'est si ça peut induire ses collègues à agir de façon raciste envers elle.

C'est donc très pertinent à savoir si ses collègues vont lire mon blog et dire: « Ah, c'est juste un fou. » ou si ils vont lire mon blog et dire: « Ah, on le savait puis on va agir de façon raciste parce que c'est dans notre nature de le faire. »

C'est donc très pertinent par rapport aux dommages que pourraient être engendrés, le degré de dommages qui pourrait être engendré.

LA COUR: Mais ça c'est un point différent: Est-ce que les croyances de ses collègues, est-ce qu'y étaient racistes ou non? Ou est-ce qu'y étaient religieux ou non?

Parce que je vois pas ça de même. Mais ---

M. RANCOURT: Il n'est pas question de croyances des collègues.

LA COUR: Non, non, bien, c'est ça.

M. RANCOURT: Vous vous -- vous vous médirigez, monsieur le juge, il n'est pas ---

LA COUR: Mais la question -- les actions des collègues. Est-ce que les actions des collègues envers Madame St. Lewis y ont changé?

Le fait de ces commentaires par ses collègues?

Ça c'est une question légitime mais c'est pas -- c'est pas la question.

M. RANCOURT: Mais, monsieur ---

LA COUR: De toute façon, je vous ai entendu sur le point.

M. RANCOURT: Bien, vous -- avec -- avec tout

respect, vous avez pas entendu mon point,
monsieur le juge, je crois parce que il n'est
pas ---

LA COUR: Bon, vous l'avez pas demandé.

M. RANCOURT: Il ne s'agit pas des croyances des
collègues, il s'agit des croyances de la
Plaignante sur la nature raciste ou pas de ses
collègues.

C'est une question tout à fait légitime. Les
autorités le disent et, donc, c'est -- c'est
comme elle va percevoir l'impact que ça peut
avoir sur elle.

Ce n'est pas ---

LA COUR: C'est pas ça la question. C'est ça, je
suis d'accord que l'impact sur elle de ses
collègues. Je suis d'accord c'est une question
pertinent mais là c'est pas ça que vous avez
demandé.

Est-ce que ce sont des Mormons ou est-ce qu'y
sont des ---

M. RANCOURT: Mais c'était ---

LA COUR: Ça c'est personnel de toute façon.

M. RANCOURT: --- c'était une question
d'introduction pour arriver là.

LA COUR: Ah! O.k.

M. RANCOURT: Puis mon point c'était que y avait
une interférence de Monsieur Dearden qui lui
disait: « Mais vous pouvez pas le savoir. »
Bien sûr qu'elle a une opinion, elle a une
croyance. Bien sûr qu'elle en a une et elle
peut, donc, répondre mais il -- je suis en train
de donner des exemples où Monsieur Dearden

dirige la témoin.

Au paragraphe 37, il y a un autre exemple où Monsieur Dearden dirige la témoin. Il dit:

« How would she know that? »

et elle répond:

“I really don’t think there is any way to access students ...”

en d’autres mots: “Je peux pas savoir ça. »

Il est en train de lui dire, pendant mes questions, il ne la -- il ne la laisse pas répondre elle-même. Il lui dit quoi répondre. C’est très clair.

Un autre exemple c’est l’exemple au paragraphe 39. Monsieur Dearden dit:

« No, no, she said it’s hard to be objective. »

puis, ensuite, elle dit:

“You said it was objective.”

Il lui dit quoi répondre.

Le ‘transcript’ est là d’ailleurs, on peut le voir.

Un autre exemple c’est au paragraphe 39, Monsieur Dearden dit:

« For the record, Monsieur Rancourt, you are belittling the qualifications of the Plaintiff ... »

et tout de suite elle enchaîne:

« Yes, that’s what you’re doing. Yes, you are ... »

et cetera.

Ils se dirigent l’un, l’autre, pendant mon examination. Il y a une interférence. Il

dirige la -- la direction de -- de l'interaction questions/réponses et ça c'est un autre exemple de ça.

Il y a plein plein d'exemples. Regardez, il y a aussi de l'interférence puis des allégations, des attaques contre moi alors que je suis en train de poser des questions.

LA COUR: O.k. ---

M. RANCOURT: Ça c'est le paragraphe 40.

LA COUR: --- deux minutes. Deux minutes.

M. RANCOURT: Un autre exemple de 'directing the witness »:

« She didn't say that. »

elle répond tout de suite:

« I didn't say that. »

Un autre exemple -- ça c'était le paragraphe 42.

Au paragraphe 43, Monsieur Dearden dit:

« I'm not letting you question this witness about meaning ... »

Il lui indique puis il dit:

« I'm ... »

Elle répond:

« I'm sorry, I was in my law professor hat. »

Donc, elle va pas aller répondre à une question parfaitement légitime, d'après les autorités.

Et mon -- ma dernière section à laquelle je tiens vous donner quelques éléments, monsieur le juge, c'est la question de la non-coopération de la Plaignante qui perdait énormément de temps pendant mon examination. Et ça c'est la section (g), comme Gabriel, dans mon factum et je veux donner juste un exemple de ça.

Et donc, je vais à la page 25 de mon factum et je donne, si vous permettez, un exemple.

C'est au paragraphe 48, en bas de la page 25 de mon factum. Parce que c'est un -- un exemple vraiment très frappant.

Et il y en a eu beaucoup beaucoup d'exemples.

Alors, là, je suis en train de vous montrer que la Plaignante a répondu des réponses -- elle a résisté; elle a, de façon constructive, refusé de répondre aux questions avec des -- des -- des grandes réponses qui n'avaient pas de sens.

Alors, voici, ça commence:

« ... Let me ask you in a very simple way -- let me drop that last question ... »

et cetera et je demande la question, donc, à la page 26:

« ... have you ever published, as author or co-author, an article about critical race theory in a peer-reviewed academic journal? »

C'est une question très précise. Tous les académiciens, tous les collègues de la Plaignante ont publié dans des 'peer-reviewed academic journal'. C'est dans leur CV, c'est comme ça qu'on applique pour des promotions, c'est quelque chose de très pertinent. Le Doyen Feldthusen a donné son CV dans cette action et on voit plein d'articles dans des 'peer-reviewed academic journals'.

Donc, c'est une question claire, concise et regardez la réponse, ça dure des pages et des pages et des pages. Elle dit -- elle dit:

« Mr. Rancourt, that actually doesn't answer

the question that that question is unhelpful and it is too narrow for an understanding of the field. »

"It's a very simple question ..."

je réponds en milieu de page et on continue comme ça.

Dans le milieu de la prochaine page:

« No, I don't want to debate, it's a simple question: Have you ever -- have you ever published in a peer-reviewed academic journal an article about critical race theory? It's a very simple question."

Puis, là, elle continue:

"No, because I don't have an interest in writing. Let me be specific, I don't have ... da da da da da"

et ça continue:

« I think my question, therefore, is very legitimate."

"It's legitimate but it's not appropriate."

Elle est en train de dire que ma question n'est pas appropriée maintenant et elle continue comme ça pendant des paragraphes et des paragraphes.

Et là je dis:

« It was a simple question. I'd like to do a follow-up question ..."

et, là, elle répond:

"Well, have you ever written an article ..."

non, c'est moi qui dis la 'follow-up question':

« ... have you ever written an article on any subject or any combination of subjects, authored or co-authored, in a peer-reviewed

academic journal? »

Je veux savoir si elle a publié dans des journaux académiques dans son domaine.

Elle dit -- elle répond:

« You'll find those items elsewhere. »

et je dis:

« Well, a chapter in a book is not an article in a peer-reviewed academic journal. I'm sure you appreciate that. »

et elle répond:

"No, I don't."

Elle refuse de répondre. Elle n'apprécie pas la valeur de la question et elle continue comme ça pendant encore des pages.

Et ensuite, elle répond un peu -- un peu plus -- plus loin, en bas de la page:

« There is no need to raise your voice, Mrs. St. Lewis ... »

et elle dit:

"Well, Mr. Rancourt, I'm finding this whole thing profoundly insulting. That's what the problem is."

Là, maintenant, elle -- elle dit que mes questions sont insultantes.

Et, ensuite -- et on continue encore des pages.

Un peu plus bas, je dis:

« I don't want to argue -- I don't want to argue, I'm asking relevant questions. »

et elle répond:

"Well, if you want me to continue, answer my question. I've had it with you. I've just had it."

C'est elle maintenant qui pose des questions et que je dois répondre si je veux qu'elle -- qu'elle continue à répondre à mes questions et ça continue encore comme ça pendant des pages.

LA COUR: O.k., je peux la regarder.

Merci, Monsieur Rancourt.

M. RANCOURT: Oui.

C'est -- et donc, si -- est-ce que je peux juste faire un survol si j'ai pas manqué juste une question?

LA COUR: Oui, 30 secondes. Trente (30) secondes.

M. RANCOURT: Je vais un survol rapide pour les -- ah oui, ah, ça c'est important.

Alors, ce qu'on n'a pas eu le temps de faire, monsieur le juge, c'est de passer 'Issue by Issue' comme on dit en anglais de 7 à 8. On a fait juste 1 et on n'a pas eu la chance de regarder ça.

Mais si on regardait ça, un point important sur cette question-là c'est que la Plaignante avait un devoir de s'informer pour préparer l'examen. C'est clair dans la jurisprudence.

Elle avait un devoir de s'informer et quand je lui ai posé des questions par rapport aux deux personnes les plus en contact avec elle dans le rapport qui est central à l'action -- c'est-à-dire monsieur Robert Major et monsieur Henri Wong -- monsieur Henri Wong a fourni des données à la Plaignante pour son rapport et Monsieur Major était la personne contact avec la

Plaignante pour son rapport.

Et quand j'ai posé des questions, elle ne savait pas si elle avait communiqué avec eux. Elle n'a pas donné aucune communication. Elle ne -- et cetera, et cetera.

LA COUR: Selon vous, elle n'a pas fait son devoir de ---

M. RANCOURT: Tout à fait.

LA COUR: O.k.

M. RANCOURT: Tout à fait, et ---

LA COUR: Merci, Monsieur Rancourt.

Je crois votre temps en est un autre cinq minutes -- c'est rendu à 10 minutes.

M. RANCOURT: Donc, vous permettez que je continue avec les ---

LA COUR: Non. Non, non.

M. RANCOURT: --- les autres 'issues'?

LA COUR: Non, je vais la lire votre factum et puis vous avez votre opportunité de faire une réplique.

M. RANCOURT: Et vous allez lire aussi mon -- mon 'Refusals Chart'?

LA COUR: Factum, Refusals Chart, je vais les lire.

M. RANCOURT: C'est les deux choses principales, monsieur le juge.

LA COUR: C'est bien. Merci.

M. RANCOURT: Merci.

THE COURT: Mr. Dearden?

MR. DEARDEN: Your Honour, I just want to deal firstly with the submissions you've just heard where Mr. Rancourt is attempting to get an order

that Professor St. Lewis re-attend examination for discovery because of the interjections that I made as counsel and the full answers that Professor St. Lewis gave to his questions. I'm asking you to completely reject that. First, I'll note that, even reading his factum, he failed to give you, in places, the question before or the answer given before that Professor St. Lewis had given and I'm merely correcting what she said because he's misrepresenting what she said.

The first one he started off with was Question 439, just to give you an example:

"Q. I want the communication that he made with you on that weekend."

and:

"A. But I just told you I can't."

and I said:

"She took -- just told you she doesn't have it."

And he's -- he's alleging that I am somehow directing this witness on how to answer when, really, what -- all I'm doing is making sure that he isn't misrepresenting what she actually gave an answer about and I wasn't going to let him.

M. RANCOURT: On est dans quel document, monsieur le juge?

Parce que je ne peux pas suivre.

MR. DEARDEN: Your factum.

M. RANCOURT: O.k., merci. À quelle page?

THE COURT: The Factum?

MR. DEARDEN: The Factum, page 11. It was in paragraph 29.

But, Your Honour, I'm -- I'm just making that as a general statement. You look at what Mr. Rancourt has put in his Factum that are somehow illegitimate interjections on my part and I -- and I submit to Your Honour that none of them are.

She's allowed to finish her answer and if he won't let him, I can object.

If he misrepresents what the answer is, I can object and put the correct answer on the record. And I don't want to spend too much time on this, a lot -- a lot of my interjections -- other interjections are objections to what he's saying; like his hypothetical questions, like, you know: Your colleagues' racist beliefs or non-racist beliefs.

But the one I really want to deal with, Your Honour, if you have his Factum, he made the -- he pointed out one of the passages where I indicated that he was belittling the qualifications of Professor St. Lewis.

M. RANCOURT: Quelle page?

MR. DEARDEN: And you'll find that at page 16. You know, you can wait for me because I'm going to give the cites.

Good.

M. RANCOURT: Oui, merci.

MR. DEARDEN: Good for you?

M. RANCOURT: Merci.

MR. DEARDEN: Okay.

So page -- it's paragraph 39 in his Factum and it looks like it's Question 747.

He only drew your attention to that one where I said:

"Mr. Rancourt, you're belittling the qualifications of the Plaintiff ..."

but if you flip the page, Your Honour, to page 17, remember, we're in a libel action here and it's a different game for Defendants and how they conduct themselves, especially how they cross-examine or examine the Plaintiff.

So I put -- put on the record, Your Honour, at page 17, excuse me:

"No, let me just put on the record, sir, I've warned you about this a number of times that how you conduct questions of a libel Plaintiff can and will be used against you as evidence of malice and aggravated damages and punitive damages and you have belittled this witness and you won't apologize for what you've done. That's your call, we've warned you. If you want to continue asking these questions along this line, you have like 45 minutes left to finish your examination for discovery, you do that at your own peril, sir."

So that -- that's my response, Your Honour, to the alleged interferences. They're all perfectly legitimate, especially to tell him that he's belittling a libel plaintiff and it was certainly allowable for Professor St. Lewis to tell him, during his discovery, that she was

taking exception to the way she was being examined by this -- this Defendant.

And everything he says, Your Honour, he's -- he's taken personal shots at me today in how I've gone about doing things.

In a libel action, all of that can and will be used against him when he makes those allegations: when he accuses me of doing something false, when he says that, you know, Professor St. Lewis swore a false statement, all of that goes to aggravated damages, punitive damages and, of course, malice.

And I've warned him repeatedly and he just refuses to listen.

Now, Your Honour, I'm going to be relying on the Refusals Chart and my Book of Authorities and my Motion Record, the Response to Defendant's Refusals Motion and I'll go -- I'm going to go issue by issue.

So, Your Honour, also note this is what's in play is what's -- the questions here in this Refusals, these eight issues. That's what in play here.

Okay?

THE COURT: Right.

MR. DEARDEN: We've dealt ---

THE COURT: I'm not sure I have a -- an authority -- Book of Authorities. I'm not sure I have that. I have ---

MR. DEARDEN: You should have nine -- 9-Tab Book of Authorities.

THE COURT: I don't think I have it. It may be

in one of the other piles or it may be in ---

M. RANCOURT: Non, c'est sept -- sept onglets pas neuf.

MR. DEARDEN: The Plaintiff's Book of Authorities, Refusals Motion, 9 tabs. I don't know what you're looking at, Mr. Rancourt. Mr. Registrar ---

THE COURT: So if you have an extra copy ---

MR. DEARDEN: I'm handing it to the Registrar. Okay.

And I will provide an extra to Mr. Rancourt because he obviously has the wrong document.

(SHORT PAUSE/COURTE PAUSE)

M. RANCOURT: O.k., objection, monsieur le juge. Objection. Ce document n'est pas le même qu'on m'a fourni. C'est très clair.

J'ai ici exactement le document qu'on m'a donné. Il a sept onglets. Il est relié de cette façon-là.

Le document que Monsieur Dearden vient de me donner aujourd'hui a neuf onglets. C'est pas le même document.

Ça c'est exactement le document tel que je l'ai reçu par -- de Monsieur Dearden. Il y a que sept onglets à moins que il y a -- c'est les onglets eux-mêmes qui sont pas mis là-dedans et que les autorités sont quand même là mais la dernière autorité que j'ai au septième onglet c'est *Iroquois Falls Corporation* et il y a ici 22 pages et c'est la dernière page et, ensuite, il y a la page qui finit ici.

Alors, Monsieur Dearden sait pas comment

5 certaines choses se font souligner dans les documents qu'il met en évidence et, maintenant, il nous amène un livre d'autorités qui est pas le même qu'il m'a servi et ça c'est -- je commence à être très inquiet de ces choses-là.

THE COURT: Okay, Mr Dearden?

MR. DEARDEN: Your Honour, I gave him this book during one of our previous hearings.

THE COURT: Okay.

10 **M. RANCOURT:** And all the Tab 8 and 9 are, are a passage from the *Church of Scientology* case and the *Mohan* decision which I don't need to -- to go to anyway.

15 *Church of Scientology* extract, one paragraph of it.

He was given this 'nine onglets' book of authorities in one of the previous. He doesn't have it with him -- he has it now.

20 **M. RANCOURT:** Ha, ha, ha, je l'ai ici, c'est exactement ce que vous m'avez donné. C'est l'original. Il y a sûrement vos empreintes digitales dessus.

LA COUR: De toute façon ---

25 **M. RANCOURT:** Il m'a donné ça, il y a sept onglets et, aujourd'hui ---

LA COUR: De toute façon -- de toute façon, vous avez les sept onglets. Il y a deux autres. Si vous avez besoin du -- en réplique, du temps, on aura la pause de toute façon à midi ---

30 **M. RANCOURT:** Je vais certainement avoir besoin du temps mais, monsieur le juge, c'est beaucoup plus sérieux que simplement ---

MR. DEARDEN: Aw, come on. Come on.

LA COUR: Attends, on va -- on va vous entendre. Vous avez déposé des causes ici, aujourd'hui, sans le signifier, c'est le droit, donc, c'est bien.

M. RANCOURT: Non, mais il a prétendu que c'était le même livre ---

LA COUR: Non, non.

M. RANCOURT: --- qu'il m'avait déjà donné.

LA COUR: Si -- ça c'est des questions de faits que je -- je sais pas quel livre a été donné.

M. RANCOURT: Vous le voyez devant vous.

LA COUR: Mais ---

M. RANCOURT: J'ai deux documents ici.

LA COUR: Assumons que vous avez raison ---

M. RANCOURT: Oui.

LA COUR: --- puis y ont ajouté deux autres causes.

M. RANCOURT: Oui.

LA COUR: Un qui n'est pas pertinent, *Mohan*, c'est une cause assez bien connue.

La deuxième, *Church of Scientology*, aussi c'est bien connu.

De toute façon, si vous avez besoin d'autre temps de la regarder, le paragraphe à l'onglet 8, vous aurez le lunch pour le faire.

M. RANCOURT: Ce qui me ---

LA COUR: O.k. Merci. Merci. Merci.

M. RANCOURT: --- préoccupe c'est pas -- c'est pas les deux autres onglets, c'est ---

LA COUR: Non, c'est toute ---

M. RANCOURT: --- le fait que Monsieur Dearden --

-

LA COUR: O.k.

M. RANCOURT: --- a essayé de dire qu'il m'avait déjà servi avec ça.

LA COUR: Ça c'est une question de faits.

M. RANCOURT: Et il vous l'a dit à vous, à la Cour ---

LA COUR: Oui.

M. RANCOURT: --- et ça je trouve ça inacceptable.

LA COUR: O.k.

Mais, de toute façon, moi, j'étais pas témoin à ces choses mais beaucoup beaucoup de documents ont été signifiés par un à l'autre.

Merci, Monsieur Rancourt, et puis, Mr. Dearden?

MR. DEARDEN: So, Your Honour, I was saying I'm going to refer to the Book of Authorities, 9 tabs, the Plaintiff's Motion Record and the Refusals Chart.

But what I was pointing out, Your Honour, is the only thing you have to decide is the issues that you have in this Refusals Chart and ---

THE COURT: The ---

MR. DEARDEN: And I've already indicated to the Court and you have indicated to Mr. Rancourt in terms of Issue No. 1 and all of those questions, he got his answer.

He doesn't like the answer, he's accusing my client of being a liar which he is going to pay for one day, in my respectful submission, when I cross-examine him -- but, at least, I'm going to try have him pay for it.

But that's dealt with. That's dealt with.
I don't need to refer to *Mohan* because you've
already know your own decision where you
rejected his so-called expert report that he
repeatedly referred to this morning.
So that issue is done.

So I'm going to Issue No. 2, Your Honour, and
Issue No. 3 which I categorize as "meanings"
-- meanings of the words "complained of"
category.

And I'd ask Your Honour to turn to Tab 1 of the
Book of Authorities which is an extract from the
text "Canadian Libel and Slander Actions" by
Roger McConchie and David Potts.

And you'll see -- you should have page 292 of
that book, a heading "Determining the natural
and ordinary meaning".

M. RANCOURT: Excusez-moi, c'est quel onglet?

MR. DEARDEN: Un (1).

LA COUR: Onglet 1.

M. RANCOURT: Merci.

MR. DEARDEN: So, Your Honour, you see in the
middle of that page -- and this is a trite
proposition:

"It is for the trier of fact to determine the
sense in which the words would reasonably
have been understood by an ordinary person in
light of generally known facts. The
intention of the author and publishers is not
relevant on the issue of meaning nor is the
subjective opinion of the Plaintiff as to the
meaning of the expression "any more

relevant". The test is an objective one ..." and the cites there are the *Hochins (ph)* Court of Appeal decision and *Botiuk v. Toronto Free Press* of the Supreme Court.

Now, if you look at Issue No. 2, Your Honour, in the Refusals Chart, so the point of law is what the Plaintiff thinks, what the Defendant thinks the meaning is, is irrelevant. It's for the Judge if it's judge alone or the jury if it's a jury to make that decision.

And so what Mr. Rancourt does is put statements of -- from one of the blogs in issue and ask:

"Could you tell me how that item, as a stand-alone item, is a racist statement?"

And you have on page 3 of the Refusals Chart, Your Honour, a reproduction of my objection and it's about a third of the way down the page. I tell Mr. Rancourt:

"I'm not letting you question this witness about meaning, that will be for the jury to decide, sir. The words -- we've set out the words "complained of" and we've set out the meanings, the natural and ordinary meanings of those -- of those words or the legal innuendoes for those words. It's not for you to say what those words mean, it's not for the Plaintiff to do anything but put in the pleading and it'll be someone -- it will be for someone else to decide."

He then asks the question at 799, says:

"That doesn't have to be pleading. I could just ask you this phrase and quote it exactly

and I could ask you: How is that a racist statement? I think that's a fair question."
"I'm saying you're looking for a meaning. You're looking for a meaning. We've pleaded the meaning, sir, we've pleaded the meanings."

Question 800:

"It's not meaning, it's an explanation. I mean, you're an expert in racism, I want to know how this can be interpreted by a person in our society to be a racist statement."

And I tell him it's for the jury to decide and I don't need to read the rest because it is for the jury to decide.

And if you flip the page, Your Honour, of the Refusals Chart -- so we're on page 4 of the Refusals Chart ---

THE COURT: Yes.

MR. DEARDEN: --- and I state again on the record:

"We have pleaded the words "complained of" and then we've matched them with the meaning of those words. You're not entitled to ask the Plaintiff what she thinks something means within those meanings."

The same points for Issue No. 3, Your Honour, which you see on page 4.

At Questions 345/346 -- or the way he frames the issue is how does the Plaintiff understand in terms of her knowledge, information and belief or legal position her defamation allegation regarding her involvement in a high-level cover-

up.

This comes directly from words in his "House Negro" blog of February 11, 2011 and he's asking her how she understands those words and my objection you see on page 4:

"We've set out in that statement of Claim what the words are that are complained of and then pleaded what the natural and the ordinary meaning is. The jury reading the blog as a whole will decide whether the meanings (a) to (e), all of them or some of them, flow from those words in their natural and ordinary meaning. It's not for this witness to tell you."

and that is the law, Your Honour.

And, Your Honour, if I could just do one more -- I'm on page 5 of the Refusals Chart and I wanted to just deal with the tenure questions and then would that be an appropriate time to break ---

THE COURT: Take the lunch break, yes.

MR. DEARDEN: --- for lunch?

So you see, in the first box, on the top of page 5, there's reference to paragraph 19 of the Notice of Examination and it asked for:

"... applications for tenure and/or promotion above the rank of Assistant Professor that are in your possession."

And, Your Honour, any questions about tenure, in this action, are a non-issue.

If you -- the Defendant falsely stated in the 'House Negro' blog of February 11th, 2011 that Professor St. Lewis was untenured.

In fact, she got tenure in October of 2001, so 10 years prior to his -- his 'House Negro' blog, he -- Joanne St. Lewis was awarded tenure.

And you will find that in the record, in our Motion Record, at Tab 1(u). The letter, it'll be an October 3rd, 2001 letter from the Dean of the Law School awarding Professor St. Lewis tenure. That's Tab 1(u), Your Honour.

And, indeed, it's not even contested by Mr. Rancourt today that she got tenure because he ran a correction that she is tenured in his blog on April 30, 2012 and you'll find that, Your Honour, at Tab 1(t) that the Defendant has corrected that false statement that she was untenured.

And you won't find it until three pages in at that Tab 1(t) where there is a very small-print, square bracketed correction: non-tenured was changed to "tenured".

So any questions about tenure are completely irrelevant. She was tenured all along. It was his false fact which will be put in issue at the trial.

And the next set of documents which we'll deal with after the lunch break, Your Honour, is he's asked from 2007 -- so, Your Honour, keep in mind -- and, in fact, you may, Your Honour, want to look at Tab 1(t) during the lunch break because that's the -- the first article in issue in this libel action. It's the February 11, 2011: "Did Professor Joanne St. Lewis act as Allan Rock's House Negro?"

That's what this action is about, Your Honour, at 1(t) and then there's another one that he wrote in May of 2011.

Yet, he fishes for student evaluations and Dean reports, reports of the Dean going back to 2007, all of which are irrelevant, even the ones he's requesting post the publication of these -- these records.

But I want to deal with that in more detail, Your Honour, when I get back from lunch.

Or, actually, you know what? I can deal with it now. It's only going to be, like, one minute.

I submit that when you see a question like this which he just threw into his Notice of Examination of, I think, 23 sets of productions he was looking for, back to 2007, on an article that was published in 2011, that automatically flags that this is a fishing expedition.

But more importantly, Your Honour, I draw our attention to what the Supreme Court of Canada held in the *Church of Scientology* case which is Tab 8 of the Book of Authorities.

Because, again, libel actions, Your Honour, they're unique. You don't have to prove damages, damages are presumed and once you prove that the -- that the -- a defamatory statement or words that are capable of being a defamatory statement were published and referred to the Plaintiff then there is a reverse onus. It's a strict liability tort where damages are presumed, malice is presumed and falsity is presumed. Three presumptions kick in and,

clearly, there's no issue that Mr. Rancourt published this article.

It refers to Joanne St. Lewis. He calls her a "House Negro" and other things that are in play in the pleadings.

So if you look at *Hill v. Church of Scientology*, Your Honour, at paragraph 177, this is Justice Cory:

"It cannot be forgotten that at the time the libellous statement was made, Casey Hill was a young lawyer in the Crown Law office working in the litigation field. For all lawyers their reputation is of paramount importance. Clients depend on the integrity of lawyers, as do colleagues. Judges rely upon commitments and undertakings given to them by counsel. Our whole system of administration of justice depends upon counsel's reputation for integrity. Anything that leads to the tarnishing of a professional reputation can be disastrous for a lawyer. It matters not that subsequent to the publication of the libel, Casey Hill received promotions, was elected a bencher and eventually appointed a trial judge in the General Division of the Court of Ontario. As a lawyer, Hill would have no way of knowing what members of the public, colleagues, other lawyers and judges may have been affected by the dramatic presentation of the allegation that he had been instrumental in breaching an

order of the court and that he was guilty of criminal contempt."

5 The passage I'm relying on, Your Honour, along with my submission that this is just a fishing expedition for the student evaluations and the reports to the Dean going back to 2007, is that damages are presumed and it matters not that, subsequent to the publication of the libel, she received promotions or didn't.

10 In Justice Hill's case, he received three promotions within the Crown office when his libel action was going on and eventually became a member of this Court.

15 The Supreme Court of Canada saying point blank it doesn't matter that he received promotions. It doesn't matter.

20 So these questions are irrelevant and fishing and how on earth asking about the Dean's report or student evaluations of what she taught -- what Professor St. Lewis taught -- would have anything to do with damages is beyond me.

25 It's -- those reports deal with her teaching. It's not dealing with the "House Negro" articles that Mr. Rancourt published. No causal link whatsoever, Your Honour.

So that's my submissions that would cover Issue 4.

THE COURT: So I think it might be a good time to take the -- is that the -- we've got five ---

30 **MR. DEARDEN:** Yes, I'm going to deal with ---

THE COURT: --- six, seven -- five, six, seven.

MR. DEARDEN: --- and have -- well, you could

write this on your chart, Your Honour, No. 5, I call it the "Henri Wong category", questions about Henri Wong.

No. 6 Issue would be questions about Robert Major. Question 7 -- or Issue 7 is also dealing with Robert Major. Issue 8 is dealing with Andrée Dumoulin at -- also -- also of the University of Ottawa.

So that's what I'm going to deal with, Your Honour, and I should be able to deal with that in, hopefully, 10 minutes.

THE COURT: Okay.

MR. DEARDEN: And then, I'll be on my feet for the other one.

THE COURT: Okay, so shall we come back at 2:15 then? We still on time?

MR. DEARDEN: Two o'clock works for me, if you want, Your Honour.

THE COURT: Two o'clock?

M. RANCOURT: Non, mais j'aimerais mieux deux heures et quart parce que j'ai besoin d'un 'break'.

THE COURT: Okay. Well, we'll come back at 2:15.

M. RANCOURT: Merci.

MR. DEARDEN: Thanks, Your Honour.

THE COURT CLERK: All rise.

--- Upon recessing at 1:04 p.m.

--- Upon resuming at 2:15 p.m.

THE COURT CLERK: Veuillez vous lever. Please rise.

THE REGISTRAR: The Court is reconvened. La Cour est en session. Please be seated. Assoyez-

vous.

THE COURT: Mr. Dearden?

MR. DEARDEN: Yes, Your Honour.

Your Honour, just before I deal with Henri Wong as a category, I also wanted to go back to the submissions I made to you about rejecting Mr. Rancourt's request that you order Professor St. Lewis to re-attend for examination for discovery because of interjections that I made or because of her particular answers to the questions.

I would ask Your Honour to note, apart from the submissions I made this morning, that there is absolutely no basis to allocate more time than he was given, that let's not forget that he had three hours of cross-examination of Professor St. Lewis in his Champerty Motion and he, in effect, had third-party discovery of President Rock, Dean Feldthusen, Céline Delorme and the Chair of the Board of the University of Ottawa. So we took two days of examinations and cross-examinations in the Champerty Motion.

So if ever there was a cry out for proportionality, even if he had a basis -- in any event, we submit he doesn't -- but even if he had a basis that interjections took away some of his time, he's had hours and hours and hours more time than one would normally have in an examination for discovery in a libel action to support his defence.

M. RANCOURT: Monsieur le juge, si je peux poser une question? C'est une interjection, une

objection.

J'aimerais ça comprendre si c'était possible en quoi mes -- des examinations dans ma Motion de Champerty sont pertinentes?

LA COUR: Vous avez votre -- votre opportunité de faire une réplique.

Prends ça en note puis en réplique.

M. RANCOURT: D'accord.

MR. DEARDEN: So, Your Honour, I'm on Henri Wong which is Issue No. 5 in the Defendant's Refusals Chart which I'd ask you to turn up, please.

THE COURT: Yes, I have it.

MR. DEARDEN: So you'll see, Your Honour, at the very first box in the right-hand column, so at the very top of the page -- and my submission to you is that all these questions have been answered; okay?

So Joanne St. Lewis is saying:

"I've given you everything I have."

And then, you see in the next box, in Question 439:

"But I just told you I can't."

and then, I say:

"She just told you she doesn't have it."

"A. I don't have it."

She refers to, you know, the best of her recollection, that whatever Henri Wong gave her to prepare her 2008 Evaluation Report would be reflected in Appendix 1 and 2 of her report.

"A. But I had no reason to hold on to it."
Professor St. Lewis says in that second box on page 7 of the chart:

"I had no reason to hold on to it. It was stale, dated demographic."

Again, at Question 440, Professor St. Lewis says:

"But I don't have it."

and then, she -- she said in answer to:

"Q. Was it a fax?"

she says:

"A. I don't recall, Mr. Rancourt."

and I said to her -- to Mr. Rancourt:

"She said she doesn't know, the witness, and I'm telling you that it is reflected in the last two pages of the Appendix."

that's the Appendix, again, to the 2008 Evaluation Report.

And then, I mean, surely, this deals with Henri Wong, Question 442, Professor St. Lewis says:

"I don't have it, Mr. Rancourt. I've produced everything I actually have."

And where she doesn't have a recollection, like in Question 449:

"Q. Did Mr. Wong communicate with you in any way about this report?"

Well, she doesn't have a recollection that he did. That's an answer. That's an answer.

So she's point blank told him:

"I've produced everything I have ..."

but, in addition, points him, to the best of her recollection, to the Appendices which would include whatever demographic data Henri Wong provided to her to prepare her Evaluation Report; like, you know, the number of students that attended the University at that particular

time.

So all of those questions on -- for Issue No. 5 have been answered by Professor St. Lewis.

Now, the next two pages of the Refusals Chart, Your Honour, pages 8 and 9, deal with Robert Major. He's the VP of Academics at the University of Ottawa.

And I'm going to take you through this two pages -- these two pages and the bottom line here, Your Honour, is that Professor St. Lewis did answer these questions.

So we start with the question at the very top of page 8:

"Q. Did you and Mr. Robert Major have any communication about the small editorial marks on these pages?

A. There may have been an e-mail which touched on that, something related to the squiggles on page 14, I'd have to look."

So then, we go on:

"Well, you asked me if I had a conversation with Mr. Major and that's what I'm saying. I think there may have been an e-mail. I'm not sure but I could look and see if I could turn it up."

And Question 645:

"So if there was one, you've already produced it? What, is that what you're saying?"

And the answer is:

"Yes, I would have produced it."

So she's answered. But we still have this issue of -- Professor St. Lewis has a recollection

that there might have been something and she had to look and she does that, Your Honour. You'll see in the middle of this long answer that Mr. Rancourt has on page 8, I say:

"Why don't we take a break and we'll look for it -- we'll look during the break?"

And the answer comes after the break, Your Honour, if you look at the next page, 9. So, in the right-hand column:

"Mr. Rancourt, you'll recall, just before we went on break, I told you that I thought there might have been an e-mail exchange with regards to the recommendation (1) between myself and Monsieur Major and I just wanted to point out that I think that is located at Tab 7 of the materials; that there is an exchange.

I said I remembered vaguely that there was an e-mail."

So, Your Honour, if I can ask you to turn to Exhibit N, as in Nancy, of our Motion Record -- which you should have, Your Honour, a letter from myself to Mr. Rancourt dated July 11, 2012 which ---

THE COURT: Yes, I've got it, yes.

MR. DEARDEN: --- which deals with undertakings, in part, but the third paragraph of this letter deals with Professor St. Lewis saying there -- there may have been an e-mail.

You'll see that -- that Question 643, where she told him she'd have a look, we deal with that in paragraph 3 of my letter to Mr. Rancourt.

So he had sent me a July 4th e-mail and I inform him that he incorrectly described an answer provided by Professor St. Lewis at Question 643 as an undertaking.

Professor St. Lewis stated:

"There may have been an e-mail, something related to the squiggles on page 14, I'd have to look."

Question 644, Professor Lewis states:

"I think there may have been an e-mail, I'm not sure but I could look and see if I could turn it up."

Question 645:

"So if there was one, you've already produced it? Is that what you're saying?"

A. Yes, it would have been produced."

Over to the next page, Your Honour, of my letter:

"Contrary to your July 4th e-mail, Professor St. Lewis did have a look and informed you at Question 700, pages 299 to 300, of the document in her productions that she's referring to:

Answer:

Mr. Rancourt, you recall, just before we went on break, I told you that I thought there might have been an e-mail exchange with regards to Recommendation 1 between myself and Mr. Major and I just wanted to point out that I think that is located at Tab 7 of the materials and there is an exchange. I said I remember vaguely but there was an e-mail."

I asked:

"Which Tab?"

The witness says:

"My Tab 7, Volume 1 of my materials where Mr. Major I told you I felt there might have been an e-mail and you see in it an e-mail string at November 18th, 2008 at 5:45, he says to me in that letter -- it's a 'cc'."

So she can't go any further that that. She did look after the break as she said she would. She recalls that Tab 7 was the document she -- she remembered and fully answered those questions on that page.

And Issue No. 7, Your Honour, also deals with Robert Major and you'll see in the third column or third box from the bottom of this page where Professor St. Lewis says in answer to Question 255:

"I produced everything that I can produce."

"I produced everything that I can produce."

And this is an e-mail, Your Honour, that is dated 2009. This is the one that -- or, actually, maybe that isn't the one that I'm thinking of so I take that back.

So she's given the answer:

"... I've produced everything that I can ..."

So there's nothing more to produce regarding Robert Major than what's been produced.

But I also want to make this point, Your Honour, about some of the documents that you were referred to this morning by Mr. Rancourt, some of which aren't even in issue in this Refusals

Chart but ...

5 It's our position that any -- any question that Mr. Rancourt asked that deals with what I'm going to call "Professor St. Lewis' second mandate" which is not -- you won't see a word of the second mandate given to her in the articles in issue in this libel action so that the -- the chronology is this, Your Honour: In November of 2008, Mireille Gervais does the Student Appeal Centre Report and alleges that there's systemic racism.

10 The University asks Professor St. Lewis to look into that for them, evaluate Mireille Gervais' report and she does that in November 2008.

15 Fast-forward three years and Mr. Rancourt writes his 'House Negro' blog February 11, 2011 which is solely about Professor St. Lewis' November 2008 Report. It's all it's about.

20 The attack is all about the work she did for the University to evaluate Mireille Gervais' November 2008 report.

25 Those are -- that's what is in play here is defamatory statements that Mr. Rancourt made about that evaluation.

It turns out that, in March of 2009, a second mandate is given to Professor St. Lewis to actually look at the University's processes to see if, indeed, there is systemic racism regarding academic fraud.

30 And that, you were referred to a letter this morning, Your Honour, that Professor St. Lewis does not have in her Affidavit of documents.

This was a March 24, 2009 letter from Robert Major to Seamus Wolfe and you'll find that at Tab 2, letter (i) as in Irene, in Mr. Rancourt's Motion Record.

You needn't turn it up but that -- that refers to the fact that, the week before, Professor St. Lewis got the mandate to evaluate the University's processes in terms of dealing with academic fraud.

Nothing to do with the issues in this libel action. Absolutely nothing.

He's stuck with what he wrote in February 11th and May the 18th, 2011, the two articles that are in issue in this libel action and they don't have anything to do with the second mandate.

They have nothing to do, for instance, with Mireille Gervais' September 23rd, 2009 e-mail where Professor St. Lewis is introducing herself to Ms. Gervais vis-à-vis this second mandate.

Nothing to do with that.

His attacks are all on what Joanne St. Lewis did and wrote in November 2009 -- or 2008, rather, to evaluate Mireille Gervais' November 2008 SAC Report.

He's not allowed, Your Honour, in my respectful submission, to create, you know, a seven-month jury trial on issues that are completely irrelevant and not in lay in the Statement of Claim. He's got to defend those articles that he wrote and they only deal with what she wrote -- what Professor St. Lewis wrote in November 2008.

5 The next issue is No. 8, Your Honour, and that deals with an e-mail to Andrée Dumoulin who is a University employee and if you still have it out, Your Honour, this is where, in my Motion Record, Tab N -- that July 11th letter that I sent to Mr. Rancourt in terms of undertakings -- this is where we deal with Issue 8 and it's been dealt with and answered.

So ---

10 **THE COURT:** That letter is the same letter dealing with the ---

MR. DEARDEN: With ---

THE COURT: --- dealing with ---

15 **MR. DEARDEN:** --- Robert Major, yes, it's the same letter that I just read you paragraph 3 of which was the Robert Major communications.

THE COURT: And that's the same for Mr. Dumoulin?

MR. DEARDEN: No -- well, it's the same letter but this one -- there's an undertaking.

20 So if you look at Issue 8 in the Refusals Chart -- I should take you there first ---

THE COURT: Okay.

MR. DEARDEN: --- so there's an e-mail, Your Honour, Mr. Rancourt is saying:

25 "Can I have the original e-mail which this is intended to be because your Index of documents says that your Tab 13 should be your e-mail to her ..."

which is Andrée Dumoulin:

30 "... of November 19th, 2008, 10:42. So can I have that?"

And I say:

"You want a print-out on a stand-alone basis of the November 19th, 2008 e-mail from Joanne St. Lewis to Andrée Dumoulin sent at 10:42 a.m.?"

and the answer is:

"Yes."

And I said:

"We will certainly look for it."

that's the first box.

So we did look for it and you see that Joanne St. Lewis says at the bottom box of this page 11 of the Refusals Chart:

"I'm going to look and see if I have the original e-mail, that's all I can do."

So she did that, Your Honour, and it's reflected in my July 11th Undertaking letter to Mr.

Rancourt at paragraph 2.

So if you have my Motion Record, Tab N, you look at paragraph 2 of my letter, I inform Mr.

Rancourt that:

"Professor St. Lewis provided the following undertaking at pages 238, 240, Questions 552 to 554 to search for the e-mail described as "November 19th, 2008 e-mail from Joanne St. Lewis to Andrée Dumoulin sent November 19th at 10:42 a.m., produced as part of an e-mail chain at Tab 13."

So -- and what that means, by the way, Your Honour, the e-mails -- like, the contents of the e-mail are known but it's in the actual e-mail that we're talking about, November 19th, 2008 at 10:42 is in an e-mail chain.

5 So he's not deprived of what was in that e-mail, he wanted it in a stand-alone basis. We agreed to look for it -- Professor St. Lewis agreed to look for it and she did. She can -- and you see the answer in paragraph 2 of the Undertakings letter:

"The Plaintiff has conducted a search of her records and cannot locate this e-mail on a stand-alone basis."

10 **THE COURT:** So the e-mail is provided in the chain?

MR. DEARDEN: Yeah.

THE COURT: Somewhere else?

15 **MR. DEARDEN:** The entire contents are there. There's nothing missing.

He has it but he wants the stand-alone e-mail. He wants a copy of it on a stand-alone basis and that was looked for to try to find it and she could not find it and that's the end of discussion.

20 But he spends a whole page of Refusals Chart on that. Obviously, to put it point blank, he doesn't believe that answer.

25 Well, believe it because she couldn't find it. This is a 2008 e-mail. It's not there. If it was, there's no problem producing it because the contents are known. There's nothing being hidden. He has it.

30 **THE COURT:** And where is it that he has it? Is that in some document?

MR. DEARDEN: It's in an e-mail chain -- what did I say in this answer -- Tab 13 of the Affidavit

of documents. It's in -- so I actually tell him in paragraph 2 of my July 11th letter:

"... it was produced as part of an e-mail chain at Tab 13 of Professor St. Lewis' Affidavit of documents."

So, Your Honour, subject to any questions you have, that's my submissions on Mr. Rancourt's Refusals Motion regarding Professor St. Lewis' examination for discovery and I'm ready to start arguing my Refusals Motion.

THE COURT: Okay, I'll give him a short reply.

M. RANCOURT: Monsieur le juge, j'aimerais juste ---

MR. DEARDEN: « Short » being what, Your Honour?

THE COURT: Well, I think ---

M. RANCOURT: Mais, monsieur le juge ---

THE COURT: --- 10 minutes. Dix minutes, c'était ça qu'on ---

M. RANCOURT: Non, vous aviez dit 15.

LA COUR: O.k.

M. RANCOURT: Plus -- plus vous aviez dit que, étant donné qu'il y avait deux nouveaux trucs, j'aurais un peu plus de temps à cause de ça.

LA COUR: Si nécessaire.

M. RANCOURT: Oui.

MR. DEARDEN: Well, Your Honour, can I submit that you ---

M. RANCOURT: Donc, c'est ce que vous aviez dit avant -- avant le lunch.

MR. DEARDEN: --- you have given him like almost an hour extra time. He used up all of his reply times three ---

LA COUR: Fifteen (15) minutes ---

M. RANCOURT: Est-ce que -- est-ce qu'on a besoin de cette perte de temps?

LA COUR: O.k. O.k., 15 minutes.

Okay, Mr. Registrar, ---

M. RANCOURT: Monsieur le juge ---

THE COURT: --- you keep track of the time; will you?

M. RANCOURT: --- avant de commencer mon temps, j'aimerais donner un peu plus de temps à Monsieur Dearden parce que je pense que, par inadvertance, il a oublié de mentionner 'Issue 7'.

Il a complètement sauté 'Issue 7' alors j'aimerais lui donner un peu de temps pour qu'il fasse ses représentations par rapport à ça. Il a complètement sauté cette question-là ---

MR. DEARDEN: No, I didn't, I dealt with it.

M. RANCOURT: --- et j'ai besoin ---

MR. DEARDEN: I drew your attention, Your Honour, to page 10 of the Refusals Motion and I said for Issue 7: look at -- I was saying the third box from the bottom. You can go 1, 2, 3, 4 -- the fifth box on that page which is:

"I produced everything that I can produce."
It was answered.

THE COURT: Yes, I have some notes of that. J'ai des notes de ça.

M. RANCOURT: O.k., alors, je me suis trompé. Je m'excuse.

LA COUR: O.k.

M. RANCOURT: Parce que ce numéro 7, ce « Issue

7 » était à propos d'un courriel dont on connaît l'existence et qui a été -- en anglais on dit 'severed' -- c'est-à-dire qu'il a été noirci sur certains points, incluant la date, parce que on a connu son existence à travers une demande d'Accès à l'information.

Je vous l'ai montré ce matin ce courriel; n'est-ce pas?

Alors, ce courriel, moi, je demande le courriel au complet qui -- qui viendrait de ça. Je vous l'ai montré ce matin ---

LA COUR: Et la réponse disant que elle n'a pas ce courriel; c'est ça.

M. RANCOURT: Elle dit:

« I produced everything that I can." mais je comprends pas comment, dans la même période, des courriels peuvent disparaître, d'autres sont là, d'autres sont pas là. J'ai du mal à comprendre ça quand c'est électronique et c'est dans -- dans son courriel. Alors, c'est ça le problème.

Tous les -- comme j'ai dit ce matin, tous les courriels dont j'ai pu connaître l'existence non pas été produits. Aucun.

LA COUR: Mais ça c'est quelque chose que vous pouvez le demander au procès.

M. RANCOURT: D'accord.

LA COUR: Ça c'est-tu ça? C'est-tu important ou non? Je sais pas.

M. RANCOURT: D'accord.

Alors, je vais donc répondre aux points de Monsieur Dearden maintenant.

J'aimerais signaler -- j'aimerais vous donner une liste juste pour guider un peu ma réponse.

C'est juste un rappel. Ça c'est une liste des 'issues' dans la motion qui est devant nous.

LA COUR: Vous avez le droit de répondre aux questions ---

M. RANCOURT: Oui.

LA COUR: --- soulevées par ---

M. RANCOURT: Oui, et ceci adresse la première question de Monsieur Dearden.

Alors, mon point est, quand vous regardez, j'ai fait une liste des -- des 'issues' dans la motion qui est devant nous et mon -- sur la première page.

Et mon point est que c'est une motion -- Monsieur Dearden a répété à plusieurs fois que les seules questions devant vous, monsieur le juge, sont 'the Refusals Chart'.

C'est faux, c'est une motion ---

LA COUR: Non, non, non, non. Non, non.

M. RANCOURT: --- pour production ---

LA COUR: Non, j'ai compris cette position.

M. RANCOURT: D'accord.

LA COUR: Mais Maître Dearden a décidé de -- de limiter ses -- ses réponses à votre charte ici. Donc, il a ---

M. RANCOURT: Merci pour cette clarification.

LA COUR: Oui.

M. RANCOURT: O.k. Donc, ça c'est résolu.

LA COUR: Ça c'est: il a répondu à travers ces choses-là.

M. RANCOURT: O.k., ça c'est résolu.

Deuxièmement, monsieur le juge, j'aimerais vous signaler que Monsieur Dearden n'a pas fourni un factum pour cette motion, donc, les arguments qu'il a faits maintenant je les entends pour la première fois.

Et donc, je veux -- et c'est des -- et c'est des nouveaux arguments et je veux répondre à chacun qui est important.

Et je fais remarquer à la Cour que Monsieur Dearden vient de faire encore un bruit audible du genre « phhhhh » et on lui a demandé ce matin de pas faire ce genre de -- d'interventions et j'apprécierai que la Cour le dirige comme tel.

MR. DEARDEN: But perhaps, Your Honour, if the witness -- or Mr. Rancourt could be told there's -- I don't have to put in a factum. I don't have to.

I gave him the Book of Authorities.

THE COURT: Right. Right.

MR. DEARDEN: He had that well in advance and that's all I refer to.

M. RANCOURT: Je dis pas qu'il a besoin d'émettre un factum, je dis que je n'ai pas vu ces arguments avant aujourd'hui et que, donc, je veux répondre et je veux le temps de répondre à ces nouveaux arguments que je n'ai pas entendus avant aujourd'hui.

LA COUR: Ah, nouveaux arguments? C'est votre charte. C'est vous qui a préparé cette charte de ---

M. RANCOURT: Oui.

LA COUR: --- de refus puis engagements.

Donc, il a répondu à votre document. Donc, vous avez eu ça -- son record ou son bref ce que ---

M. RANCOURT: Je vais maintenant adresser chacune de ces points parce que il y a des choses qui ont besoin d'être clarifiées, corrigées, et cetera.

Alors, permettez-moi de recueillir mes notes qui sont en ordre ici.

LA COUR: Mais ça c'est toutes des questions -- ici, des questions sont différents que les -- les questions que vous avez identifiées dans votre charte.

Vous avez ajouté d'autres conditions: reputation, communications with Major -- okay, that one was there.

M. RANCOURT: Vous parlez de la page 1 ou la page 2?

THE COURT: Impact on reputation -- lack of impact on reputation.

M. RANCOURT: Vous parlez de la page 2 de ce document.

LA COUR: Bien, c'est la page 2 ---

M. RANCOURT: Oui, tout ce que j'ai fait à la page 2, monsieur le juge, j'ai pris les titres des 'issues' qui sont dans le 'Refusals Chart'.

THE COURT: 'High level cover-up'?

Was that one of the issues?

M. RANCOURT: C'est quel numéro ça?

LA COUR: Trois (3).

M. RANCOURT: Alors, 3, si on va à « Issue No. 3 » and le 'Chart' ---

LA COUR: Oui?

MR. DEARDEN: Yes.

M. RANCOURT: Oui, c'est là.

MR. DEARDEN: Headings.

M. RANCOURT: 'Issue' ---

THE COURT: « High Level ... », okay, so you've taken the headings from ---

M. RANCOURT: Oui, j'ai pris les 'headings' et je les ai simplement mis en liste pour -- comme un guide rapide de ---

LA COUR: Oui.

M. RANCOURT: --- des thèmes.

LA COUR: Très bonne chose.

M. RANCOURT: Oui, c'est tout ce que j'ai fait, monsieur le juge.

O.k., alors donc, je veux répondre à chacun des points importants de Monsieur Dearden comme suit ...

Excusez-moi, je vais juste mettre mes feuilles en ordre là. O.k.

Donc, premièrement, je veux aller à mon factum. Je veux montrer une autorité qui répond à une des questions de Monsieur Dearden.

Donc, si vous prenez mon factum et vous allez à l'onglet 4, c'est une décision -- en partie, ce sont des pages d'une très grande décision qui est la fameuse décision *Rothmans*; n'est-ce pas? Parce que *Rothmans* a fait un résumé de ce qui était pertinent dans les examens pour découverte.

Alors, je suis à l'onglet 4 de mon factum. Est-ce que vous êtes là, monsieur le juge?

LA COUR: Oui.

M. RANCOURT: Et je veux aller à la page 30 de cet onglet où, dans cette décision, à ce paragraphe 129, on fait un résumé. On met des 'bullets' et on fait un résumé de toutes les choses qui dirigent comment on peut faire un examen pour la découverte; n'est-ce pas?

LA COUR: O.k.

M. RANCOURT: Et à la page 30, je veux aller en bas de la page, le dernier 'bullet', et je vais lire ça. Ça dit:

« The witness on an examination for discovery may be questioned for hearsay evidence because an examination for discovery requires the witness to give not only his or her knowledge but his or her information and belief about the matters in issue. »

Alors, ça c'est très important parce que ça guide la motion qui est devant nous qui est une motion de refus et de production.

Et à la page 31, c'est-à-dire la prochaine page de cette même autorité ---

LA COUR: Oui?

M. RANCOURT: --- on a le dernier 'bullet' qui est en haut de la page qui dit:

« The witness on an examination for discovery may be questioned about the party's position on questions of law. »

Donc, quand je demande en quoi c'est pertinent, pourquoi c'est pertinent à votre avis, ce sont tous des questions légitimes qui sont permis en découverte.

Parce que Monsieur Dearden a voulu ramener tout à

l'action principale et dire que, puisque
l'action principale c'est juste après ce blog,
rien d'autre a d'importance.

Mais c'est pas vrai. On est en découverte et on
suit les règles de découverte.

Aussi, quand j'ai demandé à la Plaignante --
Monsieur Dearden a fait un cas de ça -- quand
j'ai demandé à la Plaignante:

« Dans quel sens -- dans quel sens est-ce que
vous comprenez cette expression-là ou ces
mots-là? »

Monsieur Dearden a dit, vous vous souvenez, c'est
le jury qui doit décider « the meaning » qu'il a
dit en anglais. Vous vous souvenez de cette
présentation de Monsieur Dearden?

Eh bien, c'est -- c'est pas -- c'est pas du tout
le cas. Le jury doit décider de la question de
diffamation, oui, mais la témoin doit répondre à
des questions de ses croyances, 'hearsay', des
questions de droit. Elle doit répondre à tout
ce genre de questions. C'est permis dans
l'examen pour la découverte.

Bien sûr que c'est le jury qui va décider le sens
pour les bienfaits de la décision de diffamation
mais on n'est pas en train de décider la
décision de diffamation, on est en train de
décider une motion pour refus sur découverte.
Vous voyez mon point, monsieur le juge?

LA COUR: Oui.

M. RANCOURT: Ensuite, Monsieur ---

LA COUR: Donc, selon vous, les -- les mots, que
c'est que ça voulait dire, mettons « House

Negro » ---

M. RANCOURT: Oui?

LA COUR: --- y faut que -- il faut qu'elle donne son -- ses croyances, si vous voulez ---

M. RANCOURT: Sa compréhension du terme, qu'est-ce que elle entend par ça, comment, elle, elle comprend ça.

Tout à fait, que ça soit des questions d'opinion, ses croyances ou même de droit, elle doit répondre à ces questions-là.

LA COUR: Ça c'est ---

M. RANCOURT: Je ne peux pas aller ---

LA COUR: Ça c'est pas dans leur plaidoirie? Est-ce que c'est pas dans leur réclamation qu'ils disent ---

M. RANCOURT: Non.

LA COUR: --- que, selon les dictionnaires, selon -- ce sont ---

M. RANCOURT: Je n'ai pas entendu de la témoin comme elle comprend ces mots-là et quelle signification ces mots-là ont pour elle. Je n'ai pas ça en évidence et j'ai le droit d'avoir ça en évidence.

MR. DEARDEN: Your Honour, of course, the meanings are in the Statement of Claim.

THE COURT: They're in the Statement of Claim?

MR. DEARDEN: Of course, they are.

M. RANCOURT: Il y a une expression mais ce que j'ai dit c'est que, bien qu'il y a un énoncé dans les -- dans le 'Statement of Claim', ce n'est pas de l'évidence.

Moi, j'ai le droit, en découverte, de connaître

de la Plaignante son opinion personnelle, son opinion sur les questions légales en quoi -- par exemple, une des questions clés que j'ai demandée, monsieur le juge, c'est: En quoi est-ce que telle phrase précise est un énoncé raciste?

Dans le -- dans le 'Statement of Claim', on annonce simplement: Voilà, ça c'est raciste. Mais on ne dit pas comment et pourquoi c'est raciste. On n'explique pas en quoi c'est raciste.

Alors, j'ai demandé qu'on m'explique pourquoi est-ce que cet énoncé est un énoncé raciste. Quelle est votre compréhension de la définition de quelque chose qui serait raciste?

Et ça, monsieur le juge, j'ai le droit de demander ces questions-là.

LA COUR: Même si c'est pas pertinent?

M. RANCOURT: C'est tout à fait pertinent, monsieur le juge.

LA COUR: Mais dans une -- dans une cause de diffamation, les intentions du Défendeur, vous-même, ou les intentions de -- du Demandeur sont pas pertinentes ou pertinents.

M. RANCOURT: Mais je comprends pas, monsieur le juge.

LA COUR: Les intentions c'est un test objectif ---

M. RANCOURT: Oui.

LA COUR: --- et non pas subjectif. Les intentions ---

M. RANCOURT: Je suis d'accord.

LA COUR: Le point de Maître Dearden c'est selon le texte qu'il a -- qu'il a soumis que c'est -- ce n'est pas pertinent.

M. RANCOURT: J'ai compris l'argument de Monsieur Dearden. Moi, je suis en train de dire quelque chose d'autre.

Je comprends que ---

LA COUR: Parce que si c'est pas pertinent ---

M. RANCOURT: Mais c'est tout à fait pertinent.

LA COUR: C'est objectif. C'est objectif, est-ce que une personne ordinaire, en écoutant ou en lisant ces mots-là décidera que la réputation de la Demanderesse peut être affectée dans une manière négative?

Si j'ai bien compris le test.

M. RANCOURT: Monsieur le juge, en tout respect ---

LA COUR: Donc, les intentions -- mais vos intentions ni l'intention de Madame sont pertinents.

M. RANCOURT: Je suis d'accord mais, monsieur le juge, avec tout respect ---

LA COUR: Est-ce que j'ai bien lu la chose? Donc, si c'est ça ---

M. RANCOURT: Si je peux expliquer, monsieur le juge?

LA COUR: Oui?

M. RANCOURT: Monsieur le juge, avec tout respect, vous êtes en train de faire l'argument qui est l'argument de la cause principale, qui n'est pas l'argument qui est devant nous en ce moment.

Vous êtes en train de dire comment ---

LA COUR: Oui, mais -- oui, mais si c'est le test ---

M. RANCOURT: --- le juge qui va évaluer la cause principale ---

LA COUR: Ou jury.

M. RANCOURT: --- doit -- doit -- ou jury ---

LA COUR: Ou jury.

M. RANCOURT: --- ou jury -- doit répondre à la question: Est-ce que ces mots sont diffamatoires ou pas?

LA COUR: Mais ---

M. RANCOURT: Mais on est -- mais on est dans une motion de découverte, de refus pour découverte et les critères sont tels que je viens de les lire dans cette autorité.

LA COUR: Oui, mais ---

M. RANCOURT: Et ---

LA COUR: --- dans une cause ---

M. RANCOURT: --- et c'est pertinent ---

LA COUR: --- normale ---

M. RANCOURT: --- pour la raison suivante, monsieur le juge.

LA COUR: Est-ce que c'était une cause de diffamation? *Rothmans?*

M. RANCOURT: C'est un -- c'est un -- un autorité générale ---

LA COUR: Non, est-ce que c'est une cause ---

M. RANCOURT: --- pour les règles qui régistrent les examinations en 'discovery'.

LA COUR: O.k., mais est-ce -- donc, c'est pas une cause de diffamation?

M. RANCOURT: Je -- je me souviens pas l'origine de la cause.

MR. DEARDEN: You know it's not.

M. RANCOURT: Non, je me souviens pas.

MR. DEARDEN: Pfffft, it's a tobacco case, Your Honour.

M. RANCOURT: Monsieur le juge, pourquoi est-ce que on doit ---

LA COUR: Oui, mais si -- j'ai demandé, c'est Maître Dearden qui est au courant.

M. RANCOURT: Mais il a répondu d'une façon très dérespectueuse.

LA COUR: Non ---

M. RANCOURT: Il a fait des bruits, il a fait des « pfffft ». Il m'a accusé de mentir devant la Cour. C'est pas ---

LA COUR: Il a fait la suggestion que t'étais au courant.

J'ai posé une question, selon vous, vous n'étiez pas au courant mais ---

M. RANCOURT: Vous êtes très généreux à son égard, monsieur le juge, mais vous ---

LA COUR: Je suis généreux en votre égard aussi si je ---

M. RANCOURT: Merci.

J'espère que vous allez ---

LA COUR: Je ne sais pas si c'est une bonne tactique. Je ne sais pas si c'est une bonne approche mais, de toute façon, j'essaye d'être gentil à vos deux.

M. RANCOURT: Merci.

LA COUR: J'aimerais que vous soyez gentils l'un

à l'autre mais je sais pas si ça c'est des ---

M. RANCOURT: Moi, je veux bien. Je veux bien essayer.

LA COUR: J'aimerais bien ça. J'aimerais bien.

M. RANCOURT: O.k., donc ---

LA COUR: Mais c'était mon réponse à votre affaire, donc, c'est pas pertinent.

M. RANCOURT: O.k., donc, c'est pertinent parce que comment le -- la question: Est-ce que -- comment c'est raciste? J'ai besoin de ça dans ma défense parce que, dans le 'Statement of Claim', on m'accuse que cet énoncé est raciste, donc, j'ai le droit de connaître quel est l'argument comme quoi cet énoncé-là est raciste.

LA COUR: Oui, mais c'est -- c'est écrit dans la réclamation.

M. RANCOURT: Non.

C'est simplement dit -- en anglais, on dit « point blank » « énoncé raciste ». Ils disent:

« Votre énoncé est raciste, bla bla bla. »

Ils disent pas: Cet énoncé est raciste pour telle raison. Ils disent pas: Le racisme c'est ceci et, donc, ça c'est raciste.

Ils disent rien de ça. Ils disent simplement que les énoncés sont racistes et, donc, j'ai le droit de savoir en quoi ces énoncés-là sont racistes parce que il y a une définition du racisme. Le racisme c'est la discrimination sur la base de la race ou un traitement non-égal sur la base de la race.

C'est la définition du racisme que tout le monde accepte et, donc, j'ai ---

LA COUR: Mais c'est écrit à page 19:

« Legal innuendos: A person who is a traitor, a person who is a pariah in the Black community, a person by their actions is considered to be separated from the Black community and to have forfeited their social identity within the Black community ... »

But these are all the ---

MR. DEARDEN: And, Your Honour ---

LA COUR: C'est ça ça veut dire. Ce sont ---

MR. DEARDEN: Your Honour, you have to know that what that legal innuendo -- because there's false innuendo and legal innuendo which are pretty antiquated expressions in libel law. The false innuendoes are found at pages 8 to 15 of that Statement of Claim and they are the natural and ordinary meanings that flow from the statements.

This legal innuendo that you're referring to there, that is when they're special meaning.

THE COURT: Okay.

MR. DEARDEN: Okay?

And we've produced to Mr. Rancourt, months ago, an expert report about what "House Negro" means, okay, to those with specialized knowledge.

So you've got -- or he has, what is it, eight pages -- eight pages on just the February 11th blog and three more pages on the May 18th blog about what the meanings are, flowing from his article.

M. RANCOURT: Mais, monsieur le juge, avec tout respect.

Écoutez, monsieur le juge, la question de 'legal innuendo' est de dire -- le point de ça est de dire que le terme « House Negro » a un sens spécifique, c'est-à-dire qu'il veut dire qu'on accuse la personne d'avoir été rejetée par sa communauté.

LA COUR: C'est ce que ça veut dire.

M. RANCOURT: Ça ne répond pas à la question: En quoi est-ce que le titre, par exemple, de mon blog est une expression raciste? En quoi c'est une communication raciste? En quoi ça cause ou ça représente de la discrimination sur la base de la race?

C'est ça ma question. Je veux comprendre pourquoi ils peuvent affirmer que c'est raciste. C'est très important parce que, monsieur le juge, si c'est raciste, ça -- ça touche à la question de 'malice' de ma part et ça ça fait partie de leur argument.

Donc, moi, j'ai le droit de savoir en quoi c'est raciste et comment ils arrivent à cette conclusion-là ---

LA COUR: Mais quel autre détail que vous pouvez avoir?

"Natural meaning acting: Acted as a slave to her White master, Mr. Rock; acted in a servile manner toward President; inauthentic manner toward President; forfeited her cultural racial identity; supports racism ..."

M. RANCOURT: Monsieur le juge, ---

LA COUR: Tout le long de -- des ---

M. RANCOURT: Je cherche pas la définition du

terme « House Negro ». S'il vous plaît, monsieur le juge, essayez de comprendre mon sens.

LA COUR: Mais eux-autres y disent que c'est -- non, ici ---

M. RANCOURT: Je ne cherche pas la définition du terme « House Negro », je cherche que la Plaignante m'explique en quoi le titre de mon blog est une expression raciste.

LE GREFFIER: Votre Honneur, le 15 minutes est terminé.

LA COUR: O.k., donc ---

M. RANCOURT: J'ai besoin de plus de temps.

LA COUR: Cinq autres -- cinq autres ---

M. RANCOURT: Merci.

LA COUR: Cinq autres minutes.

MR. DEARDEN: No, I have a motion ---

M. RANCOURT: Alors, c'était ---

MR. DEARDEN: I have a motion to argue, Your Honour.

M. RANCOURT: J'ai besoin de plus de temps.

MR. DEARDEN: He's going -- he's even taking more than the 15 minutes you've given to him.

M. RANCOURT: Mais c'est parce qu'on a un ---

MR. DEARDEN: And he's ---

M. RANCOURT: --- un manque de communication, monsieur le juge. J'ai du mal à faire comprendre mes points.

Vous -- vous -- vous me dites ce que vous pensez comprendre, je m'aperçois que c'est pas ça que j'ai dit et j'essaye d'expliquer mon point. C'est pour ça que ---

LA COUR: O.k., cinq autres minutes.

M. RANCOURT: Je vais faire de mon mieux, monsieur le juge, mais j'ai -- il y a ---

LA COUR: Non.

M. RANCOURT: Il y a des choses importantes ici.

LA COUR: Non, le temps -- on va compléter ces choses-là aujourd'hui.

M. RANCOURT: Bon, une autre -- un autre point que Monsieur Dearden a dit c'est la question que la question 'tenure' a été complètement répondue; donc, pas besoin de s'occuper de ça. Il a dit ça.

Maintenant, je vous -- j'attire votre attention au 'Statement of Defence'.

Je vous ai donné les 'pleadings' ce matin, est-ce que vous les avez?

LA COUR: Oui.

M. RANCOURT: Alors, j'aimerais aller au 'Statement of Defence' qui est le document au milieu, à la page 20 de ce 'Statement of Defence'.

Et j'aimerais aller au paragraphe 61. C'est une de mes défenses. Je dis:

« In the alternative or as a preliminary matter, the legal action is improper because it constitutes an action by direct or indirect proxy involving one or more institutions or groups and government funds or improperly used or attributed funds and/or resources. »

Je vais argumenter que il est -- que l'action doit être arrêtée parce que c'est,

effectivement, une action par proxy.

En autres mots, je vais argumenter que c'est l'Université d'Ottawa qui dirige cette action et pour argumenter que l'Université d'Ottawa dirige cette action, la question de: « Est-ce que le Professeur St. Lewis est dirigeable? » est une question clé.

Donc, la question: « Est-ce qu'elle a été promue au-delà du grade, le premier grade d'entrée qui est le grade de Professeur Assistant ou au prochain grade, 'Associate Professor' ou au prochain grade 'Full Professor' dans les 20 plus années qu'elle est à l'université? » c'est une question très pertinente parce que ça démontre à quel point elle est -- elle est attachée et reconnaissante à son employeur pour des promotions éventuelles ou pourquoi elle a pas été promue, donc, elle est plus vulnérable, et cetera.

Donc, toute la question des promotions est entièrement pertinente à savoir sa vulnérabilité par rapport à être utilisée pour faire une action 'by proxy'. C'est pour ça que c'est pertinent.

La question de la permanence, c'est une question séparée et différente parce que, monsieur le juge, je vous informe, dans le milieu académique, la permanence presque toujours vient avec la promotion de 'Assistant' à 'Associate' et c'est pour ça que ---

MR. DEARDEN: Non, that's evidence.

M. RANCOURT: Et c'est pour ça ---

MR. DEARDEN: That's evidence, I object.

M. RANCOURT: Et c'est pour ça ---

MR. DEARDEN: Excuse me.

LA COUR: Mais c'est pas en preuve, donc, ---

M. RANCOURT: Je vous donne ma position ---

MR. DEARDEN: That's evidence and it isn't part of Reply.

M. RANCOURT: Vous avez pas besoin de le recevoir comme évidence.

MR. DEARDEN: It's not part of Reply.

M. RANCOURT: Je vous dis que c'est vrai.

MR. DEARDEN: It's the Champerty Motion.

M. RANCOURT: Et c'est pour ça que, moi, j'ai cru initialement puisqu'elle était au grade 'Assistant' qu'elle n'avait pas la 'tenure'. Et c'est très rare, c'est presque unique d'obtenir 'tenure' sans être promu à 'Associate'.

La plupart des universités en Amérique du Nord ne permettent pas d'avancer avec 'tenure' sans être promu. Les deux vont ensemble.

MR. DEARDEN: Objection again, Your Honour. That's evidence.

M. RANCOURT: C'est -- c'est peut-être ---

MR. DEARDEN: It's not in the record ---

M. RANCOURT: C'est facile à vérifier, c'est bien connu dans le monde académique et, donc, c'est pour ça -- moi, je le présente comme une évidence que vous devez accepter comme une évidence, je présente pour un argument pour expliquer pourquoi c'est pertinent que je demande des questions par rapport à ces

promotions.

Tout à fait pertinent.

LA COUR: Mais dès que tu -- depuis vous êtes au courant que les 'tenures' ---

M. RANCOURT: Oui.

LA COUR: Donc, c'est plus pertinent d'abord?

M. RANCOURT: Non, monsieur le juge, vous -- vous prenez ---

LA COUR: Vous avez corrigé et vous ---

M. RANCOURT: Vous prenez l'argument de Monsieur Dearden tel qu'il l'a -- qu'il l'a énoncé ---

LA COUR: Oui ---

M. RANCOURT: --- mais c'est pas un bon argument.

LA COUR: Oui, mais c'est ça que je ---

M. RANCOURT: Écoutez ---

LA COUR: Selon vous, vous avez eu -- vous avez fait une erreur au tout début parce que vous avez indiqué qu'elle n'avait pas du 'tenure'. Donc, ça c'était faux.

M. RANCOURT: Oui, et aussitôt ---

LA COUR: Vous avez ---

M. RANCOURT: --- que j'ai eu ---

LA COUR: --- vous avez corrigé ---

M. RANCOURT: --- la démonstration qu'elle l'avait -- ils m'ont donné la lettre ---

LA COUR: Oui.

M. RANCOURT: --- le même jour j'ai fait la correction sur le blog. Le même jour que j'ai reçu la lettre, j'ai fait la correction. Tout à fait le même jour.

LA COUR: Oui.

M. RANCOURT: Mais la question de 'tenure' est

5 séparée de la question des promotions et la question des promotions est une question importante qui se base sur la notoriété de la personne, si elle est connue nationalement ou internationalement.

10 Il y a des critères pour les promotions. Ça, ça touche la question de sa réputation, ça touche la question de si elle doit encore -- de sa relation avec son employeur et, moi, je dis que son employeur contrôle cette action et que, donc, la vulnérabilité de la personne qu'ils utilisent comme 'proxy' est une question importante et c'est pour ça que la question des promotions est très pertinente. Ça parle de -- ça parle aussi de sa réputation et, donc, ça touche les dommages dans l'action.

15 C'est pertinent pour plein de raisons. On ne peut pas dire que les promotions dans ce cas-ci c'est un employeur qui paye quelqu'un pour poursuivre une autre personne et qui contrôle cette personne-là en tant qu'employée et qu'il ne l'a pas promue depuis plus de 20 ans -- c'est tout à fait pertinent. C'est tout à fait pertinent.

20 **MR. DEARDEN:** His time is up, Your Honour.

M. RANCOURT: Ça c'est le -- ça c'est juste -- j'ai -- j'ai besoin de ---

LA COUR: O.k.

25 **M. RANCOURT:** --- encore de faire -- vous voyez, vous -- j'avais besoin de vous expliquer ---

MR. DEARDEN: No.

30 **M. RANCOURT:** --- cette question-là, monsieur le

juge, et il y a trois ou quatre autres questions comme ça que je dois contrer de Monsieur Dearden parce que c'est faux ce qu'il dit et j'ai besoin du temps de les faire là la réponse.

MR. DEARDEN: No. No.

M. RANCOURT: C'est des --- c'est des choses qu'il a dit ---

MR. DEARDEN: This is totally unfair, Your Honour.

THE COURT: Okay, what I will do -- qu'est-ce que je vais faire, je vais vous accorder de les envoyer par écrit, limité de cinq pages sur tes autres -- combien de points que vous avez là?

M. RANCOURT: Um, y faudrait que je les compte, monsieur le juge.

LA COUR: O.k., les quatre points. Dis-moi les quatre points.

M. RANCOURT: Je sais pas si c'est -- o.k., je peux vous les énumérer.

Um, o.k., y avait la question que je veux des documents qui partent de 2007.

LA COUR: Oui, ça c'est la même chose ici.

M. RANCOURT: O.k., la question qui partent -- alors, je veux répondre à cette -- à ce point de Monsieur Dearden, en détails, parce que ---

LA COUR: C'est ça que vous êtes en train de faire parce que, selon vous, c'était une promotion ou est-ce qu'elle avait fait demande?

M. RANCOURT: Ah non, non, il y a plus que ça, monsieur le juge.

LA COUR: O.k.

M. RANCOURT: Il y a plus que ça.

Est-ce que vous voulez que je fasse les arguments
ou que je vous dise juste ---

LA COUR: Non.

M. RANCOURT: --- les thèmes?

LA COUR: Non, non, parce qu'on va compléter
l'autre affaire aujourd'hui.

M. RANCOURT: Oui.

LA COUR: Donc, ---

M. RANCOURT: Mais ---

LA COUR: --- donne-moi les listes des quatre
questions ---

M. RANCOURT: O.k.

LA COUR: --- quatre questions.

M. RANCOURT: O.k., donc, il y a ça.

LA COUR: Je vais les décider si c'est
nécessaire.

M. RANCOURT: O.k., ça c'est quatre.

Je voulais expliquer pourquoi -- ah, o.k., ça
c'est une autre affaire.

(COURTE PAUSE)

MR. DEARDEN: Your Honour, while Mr. Rancourt is
looking for what his four points are that he
claims he needs time for, five pages, no
attachments, I would ask, Your Honour.

THE COURT: No attachments, five pages.

MR. DEARDEN: It's five pages.

LA COUR: Les représentations: aucune -- vous
pouvez faire ---

M. RANCOURT: Le ---

LA COUR: --- référence ---

M. RANCOURT: Le problème, monsieur le juge ---

LA COUR: Non, non. Non, non, non, non, non.

M. RANCOURT: Oui. Non, non, j'suis d'accord avec les cinq pages.

LA COUR: Oui.

M. RANCOURT: Je suis d'accord avec la limite des cinq pages.

MR. DEARDEN: No, no, he says that, Your Honour ---

THE COURT: Yes?

MR. DEARDEN: --- and then, what's he do? He gives you 100 pages plus, like he did with you, on a Leave Application ---

M. RANCOURT: C'est que ---

MR. DEARDEN: --- with -- with Justice Annis. Justice Annis told him: Okay, you wanted to give me some citations, two pages. He puts in 12 pages of submissions, most of it ---

M. RANCOURT: Ça c'est une méreprésentation ---

MR. DEARDEN: --- refers to the evidence. He -- he'll take advantage of it, it's unfair to Professor St. Lewis, Your Honour. It really is ---

THE COURT: Okay. No, I'm agreeing -- I'm agreeing ---

MR. DEARDEN: --- to give him this break.

M. RANCOURT: J'ai compris la limite de 5 pages.

LA COUR: Bon.

MR. DEARDEN: He says that all the time: "I completely understand." "Absolument", he says. All the time and then he breaks the ---

M. RANCOURT: Non.

MR. DEARDEN: --- the privilege that the Court has given him.

THE COURT: Well, I will only read the first five pages.

M. RANCOURT: Je comprends.

THE COURT: Okay? The rest I will tear up ---

M. RANCOURT: Si je mets des onglets, ça va être pour faciliter ---

LA COUR: O.k. ---

M. RANCOURT: --- votre travail.

LA COUR: --- toutes les questions, documents de 2007?

M. RANCOURT: Alors, je vais -- je vais prendre ---

LA COUR: Non.

M. RANCOURT: O.k., je veux résumer comme -- je veux reparler de 'Issue No. 5', l'affaire de Henri Wong. Je veux reparler de 'Issue No. 6', l'affaire de Robert Major.

Mais, monsieur le juge, la chose qui me dérange dans l'écrit c'est que je m'aperçois que c'est en discutant avec vous que j'arrive à faire comprendre mon point.

En écrit, ça ne passe pas et c'est pour ça que je trouve ça injuste que je ne peux pas simplement faire ces arguments-là avec vous ---

LA COUR: O.k., bien, vous avez eu votre temps, vous l'avez décidé comment l'accorder, donc, les règles, il faut que ça soit appliqué équitablement ---

M. RANCOURT: Et le 'Issue' ---

LA COUR: --- aux deux parties.

M. RANCOURT: --- numéro 7 aussi et le 'Issue No. 8' je vais répondre à ça.

Et je manque peut-être quelque chose mais je vais le mettre dans mes cinq pages.

LA COUR: O.k. C'est bien.

M. RANCOURT: Mais -- mais je veux conclure de la façon suivante. J'ai un petit résumé ---

LA COUR: Non.

M. RANCOURT: --- de conclusion ---

LA COUR: Non, non. Non, non, non.

M. RANCOURT: Une minute!

LA COUR: Your time is up!

M. RANCOURT: Une minute!

MR. DEARDEN: That is so abusive.

M. RANCOURT: Une minute.

THE COURT: No, no, no, time is up. Time is up. We're five more minutes past ---

M. RANCOURT: Soixante secondes pour ---

LA COUR: Non. Non, non. Vous pouvez faire dans vos cinq pages ce résumé.

MR. DEARDEN: It's incredible.

THE COURT: So let's go. We're going on the next -- on va la prochaine motion.

MR. DEARDEN: I need to switch briefcases for one minute, Your Honour.

M. RANCOURT: Est-ce qu'on peut avoir un 'break' pour changer les documents et tout ça?

LA COUR: O.k. On va prendre 10 minutes.

M. RANCOURT: Merci.

THE COURT CLERK: All rise. Veuillez vous lever.

LE GREFFIER: La Cour est en pause. The Court is in recess.

--- L'audience est suspendue à 15h06

--- L'audience est reprise à 15h19

THE COURT CLERK: Order, please. À l'ordre, s'il vous plait. Veuillez vous lever. Please rise.

THE REGISTRAR: The Court is in -- reconvened. Please be seated.

MR. DEARDEN: So, Your Honour ---

M. RANCOURT: Monsieur le juge, avant de commencer, il y a juste quelque chose de -- d'important que j'aimerais juste dire. C'est important. C'est procédural mais c'est quand même important. Ça prend 30 secondes. Je veux juste l'expliquer très brièvement, si vous permettez?

Donc, j'ai droit à cinq pages et ---

LA COUR: Cinq pages ---

M. RANCOURT: Oui.

LA COUR: --- quoi, dans 10 jours?

M. RANCOURT: Oui.

Et, monsieur le juge, je viens de m'apercevoir en regardant mes notes que une des choses que j'ai besoin c'est un document qui avait été fourni en 'discoveries' que vous n'avez pas dans vos choses que j'allais utiliser en réponse alors je propose de mettre un 'tab' où je mets ce document.

MR. DEARDEN: No. No.

THE COURT: What other document?

No, it has to be -- il faut que ça soit relié à les documents -- c'est des choses soulevées par -- parce que vous avez eu votre chance ---

M. RANCOURT: Oui.

LA COUR: --- Maître Dearden a eu sa chance.

M. RANCOURT: Oui.

LA COUR: Pis là, si y a des clarifications des questions soulevées par Monsieur Dearden, vous avez droit de clarifier ---

M. RANCOURT: Oui.

Et pour clarifier, j'ai besoin de montrer un document ---

MR. DEARDEN: No. No.

M. RANCOURT: --- parce que il ---

MR. DEARDEN: Your Honour, may I please start my motion?

M. RANCOURT: --- il a -- il a -- il a -- donc, j'aimerais pouvoir ---

MR. DEARDEN: This is totally unfair.

M. RANCOURT: --- ajouter ce document.

Vous pouvez juger si il est admissible ou pas mais j'aimerais le -- avoir la permission de le rajouter parce que c'est en réponse à quelque chose que Monsieur Dearden a dit.

MR. DEARDEN: No, Your Honour, he isn't even telling you what it is but what he is doing ---

THE COURT: What document?

MR. DEARDEN: --- is he's eating up my time.

LA COUR: O.k., je vais le -- si on a le temps, à la fin, vous pouvez faire des représentations en même temps si vous avez droit de soumettre un autre document so ...

Par écrit.

M. RANCOURT: Mais je propose que vous le regardiez et vous décidez si -- si il est admissible ou pas.

THE COURT: Okay, I'll let you do that. I'll let you make submissions, I'm not saying I'm going

to ---

M. RANCOURT: D'accord.

LA COUR: Je dis pas que je l'accepterais and if it's -- I'll probably give Mr. Dearden chance to respond to this document, whatever it is.

MR. DEARDEN: It costs so much money to be doing this with him. It's unbelievable.

M. RANCOURT: Monsieur le juge ---

THE COURT: I agree.

MR. DEARDEN: The record is -- is final, Your Honour.

M. RANCOURT: Monsieur le juge ---

MR. DEARDEN: The record has been finalized.

M. RANCOURT: Est-ce que ---

MR. DEARDEN: Anyway, he's wasting my time I would ask that he be asked to sit down.

M. RANCOURT: Je comprends -- non, non, j'ai deux -- j'ai deux points. Ça c'était un des deux points.

LA COUR: Non, non.

M. RANCOURT: J'ai deux points.

LA COUR: Non, pas d'autres points. Pas d'autres points. Non, non. Non.

M. RANCOURT: Mais ---

THE COURT: Mr. Dearden, your turn.

M. RANCOURT: Monsieur le juge ---

MR. DEARDEN: Thank you, Your Honour.

THE COURT: Okay, we have to -- we have to ---

MR. DEARDEN: Your Honour, I had an hour that I've been allocated to be able to argue this motion and 15 minutes in reply.

Mr. Rancourt, of course, has deliberately ignored

the Court's directions that he only had 'x' amount of time and then he -- then he complains he doesn't have enough.

What I'm going to do, because he's succeeded in -- in reducing my hour to half an hour because we're going to get this motion done, today. He doesn't want that but we're going to get it done.

So I'm going to stop at ten to and he gets an hour and I get 10 minutes to reply if we are going to 5:00 o'clock, Your Honour.

THE COURT: We will go to 5:00 o'clock. We'll finish.

MR. DEARDEN: So I'm cutting back my argument 30 minutes ---

THE COURT: Okay.

MR. DEARDEN: --- so that we can get this done today.

THE COURT: Okay.

MR. DEARDEN: Now, Your Honour, you have -- I'm going to hand you a -- several documents -- four documents, actually.

My friend has them all although I'll give him a clean copy of his own answers to undertakings and questions.

So, Your Honour, you've got a Compendium and I've handed you a stand-alone bound 'Plaintiff's Refusals and Undertaking Chart' which I'm going to take you through.

But I've also handed you ---

M. RANCOURT: Je veux juste dire tout de suite, monsieur le juge ---

LA COUR: Non. Non. Non.

M. RANCOURT: --- j'ai une objection au
'Compendium' ---

LA COUR: Non.

M. RANCOURT: --- c'est toutes des choses
nouvelles ---

MR. DEARDEN: Will you please sit down?

M. RANCOURT: --- et je vais l'expliquer plus
tard ---

LA COUR: Non.

M. RANCOURT: --- mais je voulais faire
l'objection tout de suite.

LA COUR: Oui, o.k. Merci. C'est bien. Vous
avez -- vous aurez votre chance ---

M. RANCOURT: Merci.

LA COUR: --- à la fin.

MR. DEARDEN: Your Honour, I've handed -- two of
the documents I've handed you are Mr. Rancourt's
documents. So after I examined him for
discovery and he objected to numerous questions,
he provided me, on July the 18th -- so his
Responding Motion Record contains these two
documents that I've handed you on a stand-alone
basis.

So he's provided answers of Denis Rancourt to
most of the questions in the Plaintiff's
Refusals and Undertaking Chart and he's provided
answers of Denis Rancourt to undertakings; okay?
Now, these have different dates on them, like,
"July 17th" or "July 13th" but he actually served
them on July 18th and I'm going to be referencing
these answers as the "July 18th Response", okay,

5 and I'm going to be referring to this because he has now decided in writing, after he's had time to think of what answer he's going to give me that I asked on discovery -- given me a ton of answers which I'm going to -- going to tell you when -- as we go through the chart, I'll show you that's answered.

10 But the answer comes in this written answers that he gave me after the examination when he refused to answer all of these questions.

15 But I wanted to start, first, Your Honour, to take you -- or to give you a backdrop of what this action is about because, obviously, that's going to dictate the relevance of the questions I asked him.

20 And the Compendium at Tab 1 contains the February 11th, 2011: "Did Professor Joanne St. Lewis act as Allan Rock's House Negro?" article.

25 That was the first one, Your Honour, and then -- and then, if you flip to Tab 2 of the Compendium -- so Tab 1, you have ---

THE COURT: The article.

MR. DEARDEN: --- the first "House Negro" article.

30 Tab 2, I gave him a Notice of Libel on May 16th. What's he do in response to Tab 2, my Notice of Libel? He writes another libellous article which you'll find at Tab 3. That one is: "Top dog Canadian freedom of the press lawyer targets UofOWatch ..." at Tab 3.

So those are the two articles in issue: Tab 1, Tab 3.

It's all about what you see at Tab 5. Tab 5 of the Compendium is the Student Appeal Centre 2008 Annual Report written by Mireille Gervais.

I've just given you the Table of Contents there but that -- there's the document that President Rock asked Joanne St. Lewis to evaluate and she did that, Your Honour. You'll see her evaluation report at Tab 6 of the Compendium.

I didn't reproduce the whole thing but you see Professor St. Lewis' evaluation report of the Student Appeal Centre Report at Tab 6.

That's all this libel action is about is those two articles. Not the second mandate that was given in the spring of 2009, it's these articles.

And the law of libel, Your Honour, I've put in the Book of Authorities, the Plaintiff's Book of Authorities which we had before from the previous motion. I don't know if you have it handy?

THE COURT: Okay.

MR. DEARDEN: So Tab 2, again, these are extracts from the Roger McConchie text book on libel. Analysis is dealt with at Tab 2.

M. RANCOURT: Où est-ce qu'on est là? Chu perdu.

MR. DEARDEN: The Book of Authorities?

LA COUR: Le 'Book of Authorities' qui est à ---

MR. DEARDEN: Tab 2.

LA COUR: --- déposé dans la motion -- dans votre motion.

M. RANCOURT: Oui, donc, de -- la motion d'avant?

LA COUR: Oui.

MR. DEARDEN: Yeah, this is -- this book was put in for Refusals Motions, plural.

M. RANCOURT: Celle avec neuf onglets alors qu'il y en avait sept au début; c'est ça?

LA COUR: C'est ça.

M. RANCOURT: O.k.

MR. DEARDEN: So Tab 2:

« A Defendant is actuated by expressed malice if he or she publishes defamatory expressions knowing it to be false, reckless indifference to whether it's true, dominant purpose of injuring the Plaintiff because of spite or animosity or for some other dominant purpose which is improper or indirect.”

If you flip the page, Your Honour, you see on page 300 of the text:

“Proof that a Defendant was actuated by expressed malice at the time of publication of the defamatory expression defeats Defence's qualified privilege in fair comment ...”

And you see at the bottom of the page:

“Proof of expressed malice supports a claim for aggravated damages and punitive damages.”

Okay?

THE COURT: Yes.

MR. DEARDEN: Tab 3, aggravated damages is at Tab 3 of the Book of Authorities:

“Aggravated damages may be awarded in circumstances where conduct of the Defendant or his or her counsel has been particularly high-handed or oppressive thereby increasing

the Plaintiff's humiliation and anxiety arising from the defamatory statements. Their assessment requires that the Court consider the entire conduct of the Defendant prior to the publication of the libel and continuing through to the conclusion of the trial."

In other words, Your Honour, everything he does is under a microscope. I keep warning him about it, he keeps ignoring me at his peril. We'll deal with it at another -- another place and time.

But when he sends out e-mails to reporters to draw attention to what he wrote about Joanne St. Lewis or he has his Twitter or Facebook followers rallying about to come here to Court to -- to listen to his Defence that there's not -- that he never defamed Professor St. Lewis by calling -- saying that she acted as the "House Negro" of the President of the University, all of that, in my respectful submission, is relevant to the issue of aggravated damages.

M. RANCOURT: Est-ce que c'est de l'évidence, monsieur le juge?

MR. DEARDEN: And, on page 852 ---

M. RANCOURT: Objection.

MR. DEARDEN: I don't care if you object, quite frankly.

LA COUR: Pas d'objection parce qu'il faut on complète les affaires.

MR. DEARDEN: At page 852, Your Honour -- I have to do it this way, Your Honour, because I've

limited myself to 30 minutes because of his conduct in ragging the puck throughout the day. But it's important that you have the backdrop of the law that governs a libel action here. So if you look at page 852, still under the "Aggravated Damages", the *Hill v. Church of Scientology* case that's cited there, the last three lines:

"... or if the Defendant's conduct was calculated to deter the Plaintiff proceeding with the libel action or if the Defendant is engaged in a prolonged and hostile cross-examination of the Plaintiff for a plea of justification which the Defendant knew was bound to fail ..."

Hostile cross-examination such as, you know, him being warned: "Don't belittle the witness." Punitives you'll find, Your Honour -- and I'm not going to take you through it -- punitives you'd find at Tab 4 of the Compendium and the Defence of fair comment at Tab 5.

And, actually, the fair comment law that you see at Tab 5 is relevant for the question that I asked Mr. Rancourt where I've asked him:

"You tell me what statements in your blog you say are facts and you tell me what statements are opinion."

and he has to do that and he refuses to do that because you only get the defence of fair comment if it's based on a true factual foundation.

So I have to know what the true factual foundation is for his blogs versus the opinions

that he says are based on that true factual foundation.

A pretty trite principle of libel law but Mr. Rancourt refused to answer any questions on that regard.

So, Your Honour, I'm going to now take you through the Refusals Undertaking Chart and there is a column here on disposition by the Court where you can -- I'm going to note for you, going through this -- this Refusals Chart where Mr. Rancourt has answered questions that I have in this Refusals Motion after I brought it; so from his -- his answers to most of the questions.

And so I don't forget, Your Honour, because at the end -- like, at two minutes before my time is up, at 10 to 4:00, I want to -- I don't want to forget the order I'm seeking.

One of the orders that I'm seeking, Your Honour, is that now that the Defendant has answered these numerous questions in this document that he's -- he served on July the 18th, I want you to order him to re-attend to answers questions that arise out of these answers that he didn't give me back when we were doing the discovery and he has now given me.

For instance, if you look at Question 516, Your Honour, so the very first page of his document: "Answers of Denis Rancourt to Most of the Questions".

Okay, this is a question:

"Q. I'm asking you why that blog was your

best Christmas present you ever got."

and he gives me answer:

"A. The entire text of the February 11th e-mail: I'm crying with joy that is my best Xmas present I ever got. I love you."

He says:

"Mireille Gervais is a friend. She had mentioned in passing she had an Xmas present for me. We never exchange Xmas presents without giving any indication what it was. My reply to her was irony and exaggeration. It has no meaning beyond that. We both have little regard for Xmas as a commercial event. The words expressed the opposite of their literal meaning, that I'm not impressed, that this is not a good Xmas present, that I do not care about Xmas presents, that I do not have feelings for her beyond friendship and and respect."

This is the kind of example, Your Honour, where I absolutely need to re-examine Mr. Rancourt on an incredible answer like that one that he's got there.

So I'm seeking an order that all of the answers that he's given me in this document I have the right to ask him follow-up questions arising out of those answers because that's the kind of answer that I've been getting and it just is -- is incredible, as I say.

So, Your Honour, the Refusals Chart itself. If you look at -- and I notice that I didn't number the pages of this which was really dumb

5 but what we -- the way we've done it is 'A' through 'V'. You see, Your Honour, the first section is A: "Defendant's Communications with the Student Appeal Centre Director Mireille Gervais".

10 You may want to note that there isn't an 'O' or a 'P' section in here. Don't ask me why I skipped those letters of the alphabet but I did. So we've got A to V but we don't have an 'O' or a 'P' section in case you think you're missing those sections of this document.

15 So, Your Honour, if I could now start -- or take you through this document as to what was answered and pretty much ---

THE COURT: There are numbers on the top of the page; are there not?

MR. DEARDEN: Maybe my -- oh, yes! Yes, there is.

THE COURT: So ---

20 **MR. DEARDEN:** Sorry, my binding -- my spiral -- they are. So that's perfect.

THE COURT: Okay.

MR. DEARDEN: I wasn't as dumb as I thought I was.

25 Yes, so -- so page 1, Your Honour ---

THE COURT: Okay.

MR. DEARDEN: --- and heading A, that first question -- so I'm -- when I say "first question", I mean "No. 1" so A1 ---

30 **THE COURT:** Yes.

MR. DEARDEN: --- he's answered it.

The same with -- so 516 -- Question 516 was

answered by the July 18th response; 521 was answered as you see at the bottom of page 1, he answered that.

Going over to page 2, he answered Question 469 on July the 18th. And for No. 3, on page 2, is a partial answer. It's a partial answer.

I've asked, Your Honour -- and this happens in a number of places in this document -- I've asked Mr. Rancourt to print out whatever links that he has in e-mails -- it's primarily the e-mails that he has produced and he won't and my argument is that those links -- so if he sends an e-mail to an Ottawa Citizen reporter to capture their interest or Student Editors that he sent e-mails out to about this case, there's links that he has but I don't know what the linked material is.

And I've asked him to print out the links and he says: "Do it yourself."

To me, I want to -- I don't want any confusion of what exists in the links that he's got in those letters -- so he actually has letters, he has the e-mails, for instance, where he's got that link, he can hit that link and go to ---

THE COURT: Print it out.

MR. DEARDEN: --- and print it out.

THE COURT: Okay.

MR. DEARDEN: And it's no different than if I had a letter that I put in my Affidavit of documents and it referred to other letters. You would have to produce the other letters. It's no different.

And he's saying the difference is: "Well, you know, you can get what I can get."

But I don't want any confusion about what exactly is being linked there and he should -- he should have, in my respectful submission, produced those links that he's sending, attachments to reporters or -- or his supporters.

So that's that Question 3 on page 2 wasn't fully answered and I'm requesting that, in every question, here I've asked him to print out a link to some document that he do that with what's there now. That's all he has to do is print them out.

So, Your Honour, if we go to page 3, he -- Mr. Rancourt has answered Item No. 4. So Question 369 was answered on July 18th.

You go to page 4, Question 370 was answered on July 18th.

Question -- go to page 5, Question 371 was answered on July 18th but 380 was not answered. Question 380 was not answered where Mireille Gervais asked:

"Do you think I'm missing anything?"

and I said to Mr. Rancourt:

"You've been in consultation with her about the SAC Annual Report before November 2nd ..." so before this e-mail that she's asking him if she missed anything and I'm asking:

"How much before November 2nd an e-mail was sent to you to see if anything was missing were you in contact with her?"

He won't answer that.

So I want to know what date prior to this November 2nd e-mail that Ms. Gervais started communicating with him about this -- about her report.

All of that going to issues of malice. Of course, he never revealed to anybody in the articles in issue that he had actually been in communication with Ms. Gervais about a report. It'll be our submission that he had quite a bit of involvement with the production of that report but, of course, didn't tell anybody that when he wrote the "House Negro" article.

The next page, Your Honour, I'm on page 6, so Section B which is dealing with the SAC Freedom of Information documents, he has answered that -- the questions I've asked in that Section B but I obviously have follow-up questions arising out of his answers.

Page 7, he's answered both of those questions, 198 and 222, with his July 18th response. So that's Section C, numbers 1 and 2. And, indeed, Your Honour, he's answered on the next page, 8, he's answered those, Issues 3 and 4 as well in his July 18th response.

And we have another question on Page 9, Question 230, but that's -- that's been answered.

"Witness List". He hasn't provided me any names of witnesses. He wouldn't even provide me any names of witnesses. He wouldn't even provide me with confirmation that Mireille Gervais was going to be one of his witnesses. He wouldn't even do that.

5 He puts in an affidavit to support a claim that she -- that Professor St. Lewis repeatedly made false sworn statements and he tells me that -- he won't tell me whether Mireille Gervais is going to be one of his witnesses.

10 He's had our expert report from -- from -- on April the -- or May the 1st, Your Honour, when Professor St. Lewis was examined. Of course, I haven't received any expert reports from him. I have no -- no answers from him about what witnesses he -- he is aware of that, in the gist of their evidence that might -- might be providing evidence about this case.

15 He should definitely be required to answer who his witnesses are going to be and what witnesses may have knowledge of issues that are relevant in this action.

20 So he's not answered, Your Honour, anything about witnesses -- Section D, the Witness List. So Issue 1, Issue 2.

Wouldn't, say, on page 11 which is where I asked him if Mireille Gervais, he wouldn't answer. And page 12, he wouldn't answer about Gervais.

25 The Notice of Libel is the next section, Your Honour, E. He answered Question 567 so, on the take-down, he answered that.

30 He wouldn't answer whether he complied with my Notice of Libel where I asked him to -- if he complied with the litigation hold that he has and the two Notices of Libel. He wouldn't answer questions 571 and 572 that you see on page 13.

5 Take-Down Notices. Your Honour, this is -- this one is important, actually. Of all the Take-Down Notices that I've provided him, the Defendant, only one of his blogs -- so these are things that he's written after the two blogs that are in issue in this Libel action and I -- I've given him -- I'm just guessing here -- but I think six other Take-Down Notices since we started this litigation on things that he's written about Professor St. Lewis and he's only taken down one and I asked him why he took that one down and he said:

15 "I acted under the advice of my Union's lawyer and the reasons are solicitor/client privilege."

20 The facts aren't, our Honour. I am -- I want to know what facts occurred that led to the Union's lawyer giving him legal advice to take down one of those blogs. He didn't -- he didn't take it down because of what he said about Professor St. Lewis in this libel action, he took it down to self-serve in his labour grievance against the University of Ottawa. That's what he did.

25 But he has to tell me. I didn't ask for the advice that his Union's lawyer gave him but he has to tell me what facts occurred that led to the Union's lawyer giving him the advice to take down one of those blogs.

30 And that was a blog where he misled the world by telling them that U of O and Professor St. Lewis and me and Lynn Harnden who represents U of O in the labour proceedings didn't believe in

bilingualism to put -- put it in a nutshell.
Completely ---

THE COURT: I'm sorry, didn't what?

MR. DEARDEN: Didn't believe in bilingualism.

THE COURT: Okay.

MR. DEARDEN: Because when he invoked his rights to have this -- to proceed -- on January 26th when he was before Master MacLeod, this is one of the -- the "Cost Thrown Away" applications you have before you, Your Honour.

When he did that, nobody objected to him exercising his rights to be bilingual but I told him to take down what he wrote about what our position was on bilingualism and the only one that got taken down was the one relevant to his labour grievance and I'm entitled to know what facts occurred that he -- that resulted in the legal advice to take it down.

Because if he doesn't take down, that all goes to malice, aggravated damages, punitive damages.

The Fair Comment Defence, Your Honour, is the next section. He hasn't answered any of -- of the questions I've asked him on page 15 and 16 on this and it's as I -- if you'd make a note, Your Honour, Tab 5 of the Book of Authorities is the Fair Comment law: You get the defence if you made a comment based on true facts. He's got to identify what are the facts in his two articles that are being sued on and what are comment. He won't do that. He has to.

"Truth Defence" is on page 17, Your Honour. I'm asking him -- because he's pleaded truth --

5 okay, what are the true facts? He won't answer
it. The same -- clearly, he's got to plead --
he's got to indicate well what -- what's fact,
what's comment in those two blogs that are in
issue.

10 On page 19, Your Honour, a Google blog, 'Spot' --
that's what he uses to -- to publish is
UofOWatch blog and I've asked him to provide the
address or locations of the servers that host
the website -- blogspot.com -- which is
Google's.

15 Because he's pleading that there's a limitation
defence. In my respectful submission, there is
no such defence applicable to his blog at all
but Section 7 of the *Libel and Slander Act*, Your
Honour, which you'll find at Tab No. 6, only
gives the limitation defences in Sections 5 and
6 of the *Libel and Slander Act* if there's a
station located in Ontario.

20 So it's what I've submitted -- I didn't in -- on
page 19 reference you to Section 7 but you
should make a note. Section 7, it's in the Book
of Authorities at Tab 6: Station in Ontario.
So a pretty important question to his defence is
alleged to limitation defence: Okay, where are
they located?

25 They're in California but he's got to tell me.
The next page, Your Honour, page 20, the same --
this -- these pages 20/21, they're not answered.
30 Issue No. 2 is not answered, Issue No. 3 not
answered. It all goes to this limitation of
defence issue.

Page 22, these are not answered, Your Honour, and I've actually sent an e-mail. He moved documents out of Schedule A and into Schedule B and he hasn't answered about documents 18, 23 and 26 and nor has he given any answers, as you see on page 23, about documents 1, 2, 3.

I e-mailed him on July 24th to make sure he brought to Court copies of the three documents you see on page 22 so that you could review them to see if there was any solicitor/client privilege over those documents but he's refused to answer those and I don't know if he has brought those documents to the Court today and I'll hand you the e-mail, Your Honour, where I told him that he should do that. I don't know if he has done that.

So, Mr. Registrar (handing over the documents). More importantly, Your Honour, the -- on documents 1, 2, 3, on page 23 which he has not answered, again, it comes to he has to give me answers about what facts led to the legal advice and, you know, what happened that, shortly after he published the "House Negro" article on February 11th, he's seeking legal advice.

Facts aren't privileged. I know that's trite to say to Your Honour. Facts aren't privileged but he won't answer the questions you see on page 23 and 24.

On page 25, your answer -- Mr. Rancourt has answered both of those questions on July -- his July 18th response answers the "Failure to Apologize Section" questions.

"Communications Received by the Defendant", this is page 26, not answered. This all goes to the issue of malice, aggravated damages and punitive damages.

Page 27, Your Honour, I know I'm eating -- I'm going -- I'm ticking past my time, Your Honour, so I'll take time off of my reply but you need to know what was answered and what wasn't.

On page 27, those questions were not answered.

And the same with page 28, not answered.

But I would ask, Your Honour, if you could write on your -- your page, if you look at Compendium Tab 21 will contain the e-mail that's in issue and the same on page 28, if you look at Compendium Tab 21, that's where you'll find the e-mail we're talking about.

Page 29, Your Honour, Issue 4, not answered and could you make a note to look at Tab No. 22 of the Compendium.

And Issue No. 5 on page 29 not answered. Make a note that that document would be found at Compendium Tab 21. "Expert says: No racism."

Page 30 not answered. That's Issue No. 6 that's not answered. The same with what you see on page 31.

Facebook, page 32, answered.

Go to page 33, Your Honour, not answered. The questions on that page are not answered.

And, in short, my submission is that -- and make a note, Your Honour, Compendium Tab 24. That's his Facebook page that shows that he has 402 friends. He communicates to these friends about

5 this libel action. He won't tell me the extent of -- of the people that he -- you know, where they're located and who they are in the community, he won't tell me who he has been disseminating information about -- about this libel action.

So he hasn't answered any of the questions on page 33. He's not answered the questions on page 34. Again, Facebook friends.

10 If you make a note, Your Honour, on page 34, the Issue 4, Compendium Tab 25 deals with Exhibit 26 that's in issue there.

15 Page 35, he did not answer Issue No. 5 and, again, note at Compendium Tab No. 25 and 26, Your Honour. Compendium Tab 26.

20 And then, Mr. Rancourt sends out Tweets about this libel action and Professor St. Lewis in his defence and I want to know who is following him. So he hasn't answered the questions on page 37 and, Your Honour, if you just note, Tab No. 27 is the document referenced in Question 856.

25 Page 38: a disclaimer on UofOWatch, that was answered. So that section has been answered. Section R.

30 Page 40, Mr. Rancourt has not answered those questions where he's searching for background information about me, my connections with U of O, my contracts with U of O, going back to 2009. What he does to counsel for a Plaintiff in a Libel Action goes to malice and aggravated damages. His conduct is relevant until the verdict is issued and he's hunting for

information about me. He won't answer my questions about that.

You can go to page 43, Your Honour, which is the Section T, "Defendant's Lack of Qualifications to Publish the Articles in Issue". He has answered the questions on page 43 and 44. So those two pages, I've got answers from his July 18th response.

Section U which starts on page 45, not answered and I would just reference Your Honour to Compendium Tab No. 1 where he -- he wrote in there, Your Honour, -- and you have to dig a few pages in -- Mr. Rancourt wrote a February 16, 2011 comment about his entitlement to -- to express his view that a Black person is a "House Negro". Those questions go to this issue of Professor St. Lewis acting like President Rock's "House Negro".

So he didn't answer any of those questions, Your Honour, that you see. So nothing on 45, didn't answer on 46, didn't answer on 47 and didn't answer on page 48 or 49. No answers to any -- any of that section.

Section V, not answered, and I'd reference you to Compendium Tab No. 15, Your Honour. This is an e-mail that Mr. Rancourt sent out when he was teaching. He sent it out to students that ---
THE COURT: Which tab? I believe, from the Compendium?

MR. DEARDEN: Tab No. 15.

So he wants his students to get in touch with that 'Nigga'. That's -- Ottawa wide open.

Compendium Tab No. 15.

So he hasn't answered any of the questions under the section "Defendant's Prior Use of Racist Terms".

The undertakings, Your Honour, which I'm now on page 55. The first one is answered but for his refusal to print out the two publications that are referenced in that record.

He did not answer No. 2 at all.

In short, Your Honour, when I'm looking for, you know, what are the attachments or links or whatever, I don't want to guess. You know, to tell me to: "Go search yourself.", I want to make sure with 100 percent certainty that I am on the same page as Mr. Rancourt in terms of what he provided to other people.

I'm on page 56, Your Honour. Questions 62 and 64 were not answered but, on page 57, Issues 3 and 4 are answered. So No. 3 and No. 4, so the bottom two are answered.

And -- well, 58 is a continuation of the answer he did give.

No. 5, Issue No. 5 on Undertakings page 59, he did not answer Question 395 but he did answer Question 396 and 443 on that page.

On page 60, both -- both questions answered on -- that you see on that page; 444 and 1146, he's answered.

And the same on page 61, those questions have been answered but, obviously, I have follow-up questions for everything he's answered. So page 61, I've got an answer from his July 18th

response.

But I did not get an answer, Your Honour, on page 62 to the Question 762.

THE COURT: Seven sixty-three (763)?

MR. DEARDEN: Six two (62) and six three (63), no answers for the questions on that page ---

THE COURT: Okay.

MR. DEARDEN: --- or the next page.

So, Your Honour, I didn't forget to deal with "Order Sought". I'm asking that Mr. Rancourt re-attend for examination for discovery on all the questions he's answered on July the 18th, either the questions or the undertakings that he's provided for follow-up questions on there, on those two documents.

Then, of course, if Your Honour orders Mr. Rancourt to answer any of the questions that he didn't answer, I certainly want him to re-attend for examination for discovery on whatever Your Honour may order but I'm asking for this as an additional direction, Your Honour, for -- including the questions that he has answered. What he did, in my respectful submission, at this discovery is he refused to answer questions so he bought himself time to think up answers like the incredible answer about the Christmas present e-mail that he sent to Mireille Gervais. I don't want him to be able to do that again nor do I want to be back here so I'm submitting that he should be ordered that if he objects again to a question that I ask that he's ordered to re-attend to answer that he has to put the answer

on the record and the Court will rule on the validity of the objection based on the answer that he gave.

So that will prevent him from having weeks and weeks and weeks to think up answers and absolutely waste my time by having so many of those answers come forth on July 18th when I should have got them on April the 30th. And, of course, we'll address cost at another -- another day.

So, Your Honour, subject to any questions you have, that's my submissions on my refusals.

THE COURT: Okay, thank you.

Monsieur Rancourt?

M. RANCOURT: Merci, monsieur le juge.

Premièrement, juste rapidement, une question de justice procédurale.

Monsieur Dearden, dans cette motion, nous a donné un 'Motion Record' qui contenait seulement deux choses: le 'Notice of Motion' et le 'Refusals Chart'. C'est tout. Pas de factum, pas d'affidavit, rien.

Et ensuite, il est arrivé aujourd'hui avec ce 'Plaintiff's Compendium of Argument' qui contient 31 onglets avec beaucoup de choses nouvelles qui étaient pas du tout dans un 'Motion Record', pas dans un affidavit, qui sont des choses que je -- je ne pouvais pas savoir qu'il avait inclus, que j'ai pas pu répondre dans mon 'Responding Motion Record' et on parle de 31 choses: des autorités, des -- des documents de toutes sortes, des choses qui sont

5 nouvelles, des choses que j'aurais pas vues -- même -- même un document, par exemple, c'est la page où je demande sur un site web des -- des dons pour mes frais légaux, des choses comme ça. Incroyable ce comportement de -- de mettre des documents devant -- pour une motion de cette façon-là.

10 Je m'objecte formellement et j'aimerais demander qu'on répare cette situation-là. C'est inadmissible à mon sens.

MR. DEARDEN: Your Honour, most of these documents are exhibits to his examination for discovery.

15 **M. RANCOURT:** Pas tous et ---

MR. DEARDEN: And they're all in the record.

M. RANCOURT: Et de toute façon, j'ai le droit d'avoir dans la Notice de Motion de savoir qu'est-ce qui va être dans -- devant moi pour la motion.

20 Monsieur Dearden utilise sans cesse le mot 'ambush' et il m'arrive avec des gros documents comme ça, avec 31 onglets, cinq minutes avant le début de la motion et il fait ses arguments et il vous cite ces -- ces onglets-là dans tous les sens.

25 Il y a rien qui est en évidence dans cette motion. Je trouve ça complètement inacceptable, monsieur le juge.

30 Je vois une injustice fondamentale là de -- procédurale. J'ai pas eu la chance même de prendre connaissance vraiment de toute ce qu'il y là-dedans et pouvoir répondre en conséquence.

MR. DEARDEN: Your Honour, you're being misled. You see the Compendium notes that I gave you, you know, when I asked you to make a note, it's exhibits that are in the questions in the Refusal Chart.

I'm giving this Compendium to the Court so that you know what documents were being talked about in the question or the exhibit in issue that I put to him.

M. RANCOURT: Monsieur le juge, j'ai posé la même question il y a quelques instants. J'ai dit: J'aimerais aller chercher un exhibit pour répondre à Monsieur Dearden et vous et Monsieur Dearden avez dit: Non, c'est pas permis, c'était pas dans le 'Motion Record'. C'est quelque chose de nouveau, et cetera.

Je vais le mettre, vous allez décider si vous voulez le regarder. Un seul exhibit.

Ici, il y a 31 onglets de choses que je n'avais pas vues cinq minutes avant qu'on commence la motion.

C'est incroyable, monsieur le juge.

MR. DEARDEN: They're exhibits.

M. RANCOURT: Non, c'est toutes sortes de choses. On pourrait passer à travers mais c'est toutes sortes de choses.

Il y en a très peu qui ont des -- le tampon d'un exhibit dessus.

Alors, ça, je trouve ça vraiment vraiment injuste.

Maintenant, j'ai préparé des réponses, monsieur le juge, et pour -- j'ai préparé des réponses

pour chacune des questions dans le 'Refusals Chart' ---

LA COUR: Oui. Oui.

M. RANCOURT: --- et je les ai préparées en écrit et je propose de vous donner mon écrit pour que ça soit plus efficace.

LA COUR: Vous n'avez pas déjà donné à ---

M. RANCOURT: Je l'ai préparé pour aujourd'hui.

LA COUR: Oui.

M. RANCOURT: J'ai fini de le préparer hier soir.

LA COUR: O.k. Donc, comme je reçois le Compendium mais je vais recevoir vos documents aussi.

M. RANCOURT: Monsieur le registraire?

Ça c'est pas un 'Compendium', monsieur le juge, il y a aucun documents nouveaux. C'est simplement ---

LA COUR: Oui.

M. RANCOURT: --- écrit ce que je vais dire en réponse.

LA COUR: Et, aussi, c'est votre position, votre ---

M. RANCOURT: Exactement.

LA COUR: Oui.

M. RANCOURT: C'est uniquement ça, c'est mes arguments.

LA COUR: O.k.

M. RANCOURT: C'est pour que vous puissiez suivre mes arguments.

LA COUR: Plus précis.

M. RANCOURT: Oui.

LA COUR: C'est bon.

M. RANCOURT: O.k., merci.

LA COUR: C'est bon.

M. RANCOURT: Et ça c'est ---

LA COUR: Ça c'est bon.

M. RANCOURT: Donc, ça c'est une chose que je veux vous donner.

Mais, avant, je veux répondre à des choses immédiatement qui se soulèvent d'après ce que les choses que Monsieur Dearden a dit.

Premièrement, j'aimerais -- Monsieur Dearden vous a donné cinq ou six documents au début de sa motion et je sais même pas qu'est-ce qu'il vous a donné.

J'aimerais juste clarifier qu'est-ce qu'il vous a donné parce qu'il m'a pas donné des copies des mêmes choses. Il m'a donné que -- que certains ---

LA COUR: La copie de votre lettre. Vous avez fait deux réponses.

M. RANCOURT: Donc, il m'a donné trois choses ---

LA COUR: « Provided under oath by Denis Rancourt, July 17th » mais il a dit c'est vraiment le 18 juillet ---

M. RANCOURT: Oui.

LA COUR: --- mais c'est mentionné le ---

M. RANCOURT: Oui, donc, j'ai celle-là.

LA COUR: Pis une autre plus -- plus courte qui est datée -- bon, on sait pas si c'est le 13 ou le 16. Il y a deux dates dessus là.

M. RANCOURT: Oui, j'ai ça.

Et puis, il y en a un troisième?

LA COUR: C'est une lettre ---

M. RANCOURT: Le 13 ou le 16 encore?

LA COUR: Le 24 juillet.

M. RANCOURT: O.k., mais il vous a donné d'autres livres aussi en même temps, je me demandais c'était quoi.

LA COUR: Compendium. Compendium.

M. RANCOURT: Et c'est tout?

Donc, il y avait quatre choses?

LA COUR: C'est tout.

MR. DEARDEN: The Refusals Chart.

THE COURT: The Refusals Chart.

M. RANCOURT: Et le 'Refusals Chart', o.k. C'est tout donc.

LA COUR: Qui est à part. C'est à part.

M. RANCOURT: O.k., je voulais juste savoir parce que j'ai pas eu les mêmes documents alors je voulais juste m'assurer.

MR. DEARDEN: Yes, you did.

THE COURT: You got -- vous avez la même ---

M. RANCOURT: En même temps, je savais pas -- je savais pas ce qu'on était en train de vous donner, c'est tout.

LA COUR: Il a donné les mêmes choses à vous.

M. RANCOURT: Je les ai, oui.

LA COUR: Oui.

M. RANCOURT: Je reconnais que je les ai.

Maintenant, je sais c'est quoi, je peux dire que je les ai.

LA COUR: Oui.

M. RANCOURT: O.k.

J'aimerais dire, monsieur le juge, que j'étais très surpris que Monsieur Dearden a passé

beaucoup de temps à parler de l'action principale et de la *Loi de diffamation* et je sou mets, monsieur le juge, que la raison que Monsieur Dearden a fait ça c'est qu'il est en train de vous préparer parce qu'il veut faire un 'Summary Judgement Motion' qu'il va déposer ---

LA COUR: Bon, je veux -- j'en doute. Je sais pas. C'est possible ---

M. RANCOURT: Oui.

LA COUR: Tout est possible dans cette ---

M. RANCOURT: Oui.

LA COUR: Ça me surprendrait ---

M. RANCOURT: Mais c'était pas ---

LA COUR: Mais, de toute façon, ---

M. RANCOURT: C'était pas nécessaire de faire ça.

LA COUR: --- si -- si Monsieur Dearden ---

M. RANCOURT: C'était une perte de temps.

LA COUR: Non, mais si -- bon, mais là, on devrait faire face à des choses réelles.

M. RANCOURT: Oui.

LA COUR: Des choses réelles c'est un 'Refusals Chart' là qui est devant moi avec des questions que vous êtes demandé. Vous avez répondu à une bonne partie puis d'autres -- les autres, vous avez objecté.

Ça c'est la *Loi sur la diffamation*. C'est pertinent à -- parce que la pertinence c'est relié à la loi qui s'applique à cette action.

M. RANCOURT: Bon, alors ---

LA COUR: C'est une action en diffamation, donc, la *Loi sur la diffamation* c'est -- mettons, c'est ça que vous êtes en train -- c'est la

question, en fin de compte donc.

M. RANCOURT: Bon.

Alors, permettez-moi d'expliquer ce qu'y se passe

LA COUR: Si c'est une action criminelle, bon bien le *Code criminel* c'est pertinent. Bon. Mais allons-y.

M. RANCOURT: Bon, je veux expliquer quelque chose d'important.

Monsieur Dearden dit que, quand nous allons défendre l'action principale, je vais devoir dire quels sont les faits sur lesquels je dépends; n'est-ce pas?

Et ---

LA COUR: Je crois c'est le ---

M. RANCOURT: Il a dit ça et je l'admets, c'est vrai, ce n'est pas contesté.

LA COUR: Sur des -- oui, sur des -- certaines -- c'est des « Fair Comments », je crois.

M. RANCOURT: Oui.

LA COUR: Si c'était -- diffamation c'est assez spécial.

M. RANCOURT: Oui.

LA COUR: C'est pas une action normale.

M. RANCOURT: Alors, monsieur le juge, ---

LA COUR: Normale.

M. RANCOURT: Alors, monsieur le juge, soyez patient ---

LA COUR: Oui.

M. RANCOURT: --- permettez-moi de développer mon idée.

LA COUR: Oui, oui.

M. RANCOURT: D'accord?

LA COUR: Oui.

M. RANCOURT: Alors, Monsieur Dearden est en train de dire que, quand nous allons faire l'action, je vais être obligé de dire sur quels faits je dépends dans ma défense « Fair Comment ».

LA COUR: Oui.

M. RANCOURT: Et j'admets ça et c'est vrai. Et Monsieur Dearden veut induire la Cour en erreur en disant que: Étant donné ça, quand je fais de la découverte avec Monsieur Rancourt, il est obligé de me dire comment il va argumenter son cas quand on va être en procès.

LA COUR: Non, non.

M. RANCOURT: C'est ça qu'il est en train de dire.

LA COUR: Non, non, non.

M. RANCOURT: Il est en train de dire: Vous ---

LA COUR: Non, non, non.

M. RANCOURT: Vous devez me dire quels -- sur quels faits vous ---

LA COUR: Bon, quels faits ---

M. RANCOURT: --- vous allez ---

LA COUR: Oui. Oui.

M. RANCOURT: --- vous allez agir.

LA COUR: Oui.

M. RANCOURT: Et -- et il veut dire, dans l'argument légal, ceci je le considère un fait, et cetera. C'est ça qu'il veut dire. C'est ça la nature de ses questions.

LA COUR: Surtout dans vos blogs.

M. RANCOURT: Et ---

LA COUR: Surtout dans vos blogs si c'est vrai ou ce sont des faits sur lesquels vous avez basé votre opinion. Ça c'est « Fair Comment ».

M. RANCOURT: Oui.

LA COUR: Donc, ça c'est les ---

M. RANCOURT: Oui.

Mais, monsieur le juge, essayez de comprendre ce que j'essaye de vous dire.

Il y a une différence entre quelque chose que je dois lui dire en découverte et comment je dois argumenter mon cas dans le procès.

LA COUR: Non.

M. RANCOURT: O.k.?

LA COUR: Non, non.

Au procès, moi, j'ai vraiment ici rien à faire avec le procès ---

M. RANCOURT: Je sais, justement.

LA COUR: Ça c'est ---

M. RANCOURT: Je sais.

LA COUR: Bon.

M. RANCOURT: C'est pour ça que je n'ai pas -- les faits sont les faits, c'est clair. Les faits que je dois divulguer c'est ---

LA COUR: Mais il a le droit de savoir ---

M. RANCOURT: --- c'est les articles de blogs.

LA COUR: Oui, mais est-ce que c'est -- c'est-tu toute vrai?

C'est ça, il a le droit de savoir ce sont quels faits ---

M. RANCOURT: Alors, j'aimerais voir une autorité

qui dit que je dois expliquer à Monsieur Dearden en découverte comment je vais argumenter mon cas en procès.

LA COUR: Non, non ---

M. RANCOURT: Que ceci va être un fait droit, ceci ne sera pas -- j'aimerais voir une autorité qui dit ça.

LA COUR: Non, non.

M. RANCOURT: Je crois pas que c'est le cas.

LA COUR: Non, je suis d'accord avec vous mais ça c'est question de procès, l'approche tactique, et cetera, ça c'est à vous, c'est à Maître Dearden.

M. RANCOURT: Et ---

LA COUR: Ici, c'est simplement de savoir la base de votre plaidoirie ---

M. RANCOURT: Oui?

LA COUR: Vous avez plaidé que c'était certaines -- c'était vrai ou -- 'Fair Comment'.

M. RANCOURT: Oui.

LA COUR: Vous vous fiez sur la défense 'Fair Comment' ---

M. RANCOURT: Oui.

LA COUR: --- et puis ---

M. RANCOURT: Et c'est déjà ---

LA COUR: --- la vérité.

M. RANCOURT: --- déjà dans mon 'Statement of Defence'. C'est toute expliqué.

LA COUR: Donc, il se demande quels faits que, selon vous, sont vrais.

M. RANCOURT: Les faits qui sont vrais, c'est très simple.

LA COUR: O.k.

M. RANCOURT: Il y a des articles blogs que je nie pas qui ont été écrits.

LA COUR: Oui.

M. RANCOURT: Et il y a des -- il y a les rapports qui ont été publiés de Madame St. Lewis et du -- de l'Union des étudiants. Ça ce sont les faits qui sont devant nous.

LA COUR: Oui.

M. RANCOURT: Personne nie ces faits-là, c'est pas contesté. Il y a rien d'autre.

LA COUR: Mais il y a-tu un aspect ---

M. RANCOURT: Il y a les courriels qui vont être développés, qui vont sortir; ça c'est l'évidence qui va sortir. Il y a rien d'autre.

LA COUR: Est-ce qu'il y a un aspect opinion? Mettons, si c'est 'Fair Comment, il doit en avoir un aspect -- vous vous fiez sur 'Fair Comment'?

M. RANCOURT: Oui.

LA COUR: Bon, quels sont vos opinions dans ces choses-là?

M. RANCOURT: C'est toute expliqué dans mon 'Statement of Defence'.

LA COUR: Non, bien, ça c'est -- c'est ---

M. RANCOURT: Et c'est pas des questions de découverte.

LA COUR: Bon, tu peux-tu me dire -- c'est pas de me dire, moi, vraiment parce que, moi, c'est vraiment, simplement de décider est-ce que c'est pertinent ou non.

Si c'est pas pertinent à les questions en litige, bon bien, c'est pas nécessaire de

répondre mais lui y disent -- il y a une partie opinion, l'autre partie c'est -- c'est vrai. Ce sont des faits qui sont vrais.

M. RANCOURT: Il n'a pas le droit de savoir ça en découverte. C'est 'Litigation Privilege'. C'est comment je vais mener mon procès.

LA COUR: Non, non. Non, non.

Je suis d'accord au procès mais il doit savoir que c'est que c'est vrai, bon, tu peux dire: Tout est vrai.

M. RANCOURT: J'ai même pas décidé encore comment je vais gérer mon ---

LA COUR: Ah, non, non.

M. RANCOURT: --- mon procès. J'ai même pas décidé encore comment je vais gérer ma défense en détail.

LA COUR: Ça ---

M. RANCOURT: Toutes ces choses-là, je cours pour -- pour faire une motion après l'autre et je ---

LA COUR: Selon vous, c'est toute ---

M. RANCOURT: Je n'ai pas décidé ces choses-là.

LA COUR: Selon vous, c'est toutes des affaires du procès.

La question, mettons, 'Fair Comment', que c'est qui est vrai, selon vous, ou c'est toute vrai. La réponse ---

M. RANCOURT: Non, il demande: Quels sont les vrais faits ---

LA COUR: Non, quels sont les faits ---

M. RANCOURT: --- sur lesquels je -- je me base ---

LA COUR: Oui?

M. RANCOURT: --- pour faire 'Fair Comment'?

LA COUR: Oui, puis sur quel aspect de cet -- ce blog c'est du opinion?

M. RANCOURT: Il demande essentiellement que je lui écrive en détails comment je vais argumenter mon cas et ça c'est 'Litigation Privilege' et il y a pas -- il y a aucun -- il y a aucune nécessité ---

MR. DEARDEN: No, no.

LA COUR: Non, non.

M. RANCOURT: --- de produire ça.

LA COUR: Il a le droit de savoir -- il a le droit de savoir, selon vous, quels faits -- la question légale c'est: Est-ce que -- c'est pas une personne raisonnable maintenant mais c'est juste 'any person' if I -- I don't know if it's in the text but I believe that's my knowledge -- if any person could hold these opinions. It's been lowered by the Supreme Court of Canada. En tout cas, ça c'est des affaires que vous auriez. Ça c'est -- that's the test.

M. RANCOURT: Oui, alors ---

LA COUR: Ça c'est le test légal au procès: Could any person hold these opinions?

It's not necessarily a « reasonable opinion », if I -- I don't remember the name of the case but I have ...

Anyway, ce sont des ---

M. RANCOURT: Oui.

MR. DEARDEN: *Rick Radio.*

M. RANCOURT: Alors, je vais vous amener ---

THE COURT: What?

MR. DEARDEN: *Rick Radio.*

M. RANCOURT: Je ---

THE COURT: *Rick Radio?* Okay. So that's ---

M. RANCOURT: Je vais vous amener ---

LA COUR: Ça ça va être appliqué, soit le jury ou le juge, donc -- mais ça pour savoir ce sont quoi les faits qu'une personne peut se baser sur lesquels quelqu'un peut avoir ...

C'est pas une question de tactique, c'est de voir: O.k., selon, c'est quoi votre opinion, c'est quoi les faits?

Donc, ça c'est pertinent à la question en litige; comprenez-vous?

M. RANCOURT: Je ne peux pas ---

LA COUR: La question ---

M. RANCOURT: J'ai pas même pensé -- c'est -- c'est comment ---

LA COUR: Bon. Vous pouvez en penser parce que vous êtes ---

M. RANCOURT: Non, non, mais si quelqu'un me demande ça en contre-examinatoire là et que je -- et qu'après, dans la façon que je veux argumenter mon cas je veux changer d'idée ou quelque chose, quelqu'un demande: « Là, dis-moi tout de suite là ... », ça pas d'allure. Ça pas d'allure.

LA COUR: Oui.

M. RANCOURT: Je pense que -- je pense que c'est pas raisonnable et je pense qu'il y a aucune autorité ---

LA COUR: Bon.

M. RANCOURT: --- qui dit que vous ---

LA COUR: Ça arrive à toutes les jours.
Mettons un accident d'automobile qu'on fait.
C'est, mettons, plus l'affaire. Bon, c'est quoi
les faits? C'est basé sur -- sur la négligence.
Bon, il allait trop vite. Il a pas fait
attention. Il renouvelle pas son ...

M. RANCOURT: Oui, mais ici les faits c'est des
articles blogs ---

LA COUR: C'est ça.

Non, non. O.k., bien, vous dites si c'est la --
les faits sur lesquels vous vous basez, sur
lesquels -- non, donc, je suis pas pour vous
argumenter avec ---

M. RANCOURT: Non.

LA COUR: --- mais je vous expliquer la -- la
manière de penser parce que on fait ça à chaque
cause de négligence qui se -- mettons, 90
pourcent, c'est des bris de contrôle.

Si y a un aspect mais -- mettons, en négligence,
vous êtes pas -- vous êtes un sub -- un sous --
bon, diffamation c'est spécial mais il faut
appliquer les lois ou les faits qui sont
pertinents.

Il a le droit à savoir votre position sur les
faits que vous vous fiez pour arriver à cette
devance parce que là, sinon, c'est un 'ambush'
qu'on vient de parler ---

M. RANCOURT: Non, non, non, non, il y a -- il y
a un ---

LA COUR: Tu sais, c'est ça « no trial by
ambush ».

M. RANCOURT: Je connais pas les processus mais je pense qu'y a ---

LA COUR: Et c'est plus ---

M. RANCOURT: --- pre-trial, il y a plein d'affaires qui vont arriver ---

LA COUR: Non. Non, non.

M. RANCOURT: --- avant.

LA COUR: Non, non, c'est ça le but de la -- des examens au préalable pour savoir, o.k., pour aussi peut-être essayer de régler, peut-être, hein, des possibilités ou des admissions pour, au procès ---

M. RANCOURT: M'hm.

LA COUR: --- que, oui, y a admis ça c'est vrai ou que pour enlever la confusion possible pour que le procès ça sera plus -- moins long parce qu'on n'est pas à deviner c'est -- c'est quoi, si vraiment ça -- les allégations qu'on fait face.

C'est pour vous aussi que pour Maître Dearden, donc ...

M. RANCOURT: O.k. C'est pas des choses que je sais maintenant. Je peux vous dire ça? O.k.

LA COUR: Mais je vous dis que c'est -- c'est comme ça que ça marche là. Ça c'est ---

M. RANCOURT: Oui, d'accord mais c'est pas quelque chose que je sais, je vous le dis et je vous en informe.

Maintenant, j'aimerais qu'on aille à mon 'Responding Motion Record'.

LA COUR: O.k.

M. RANCOURT: Et Monsieur Dearden a raison j'ai

soumis en affidavit deux exhibits qui sont les exhibits -- attendez une seconde là -- oui, l'Exhibit A c'est les réponses que vous avez là. C'est en affidavit. C'est des réponses que j'ai données, question par question. Vous voyez?

LA COUR: M'hm.

M. RANCOURT: Et ensuite, l'Exhibit B, c'est-à-dire que -- non, alors, le premier, A, c'est par rapport aux 'Undertakings'. C'est mes réponses des 'Undertakings'.

LA COUR: Oui.

M. RANCOURT: Et le B c'est les réponses aux questions.

Donc, j'ai déjà fourni ça et Monsieur Dearden en a parlé et, maintenant, je veux répondre à chacune de ces questions, une à une, avec le guide que je vous ai donné et en faisant référence à ces réponses-là. D'accord?

LA COUR: O.k.

M. RANCOURT: Alors, si on passe à la première, c'est déjà répondu, je pense, que Monsieur Dearden a dit que ça avait été -- au début, ça allait trop vite, j'ai pas noté celles que Monsieur Dearden admet sont déjà répondues.

LA COUR: Question 516 ---

M. RANCOURT: Oui.

LA COUR: --- 521 ---

M. RANCOURT: Et 516, est-ce qu'il a dit que c'est déjà répondu?

LA COUR: Cinq cent seize (516)? Oui.

M. RANCOURT: Il admet?

LA COUR: Oui.

M. RANCOURT: O.k.

Um, cinq cent -- je vais me concentrer sur celles qu'y dit qui sont pas répondues.

LA COUR: Bien, vous avez pas pris ces -- oui, c'est ça.

M. RANCOURT: O.k. Alors, ---

LA COUR: Celles que vous avez répondues, on n'est pas pour ---

M. RANCOURT: --- 521, est-ce qu'il a dit que c'était répondu?

LA COUR: Cinq cent vingt-et-un (521)? Oui.

M. RANCOURT: Est-ce que ---

LA COUR: Oui.

M. RANCOURT: Oui? Donc, ça c'est répondu?

LA COUR: Oui.

M. RANCOURT: Um, 469?

LA COUR: Oui.

M. RANCOURT: O.k.

Et 478/79, je pense qu'il dit que c'est pas complètement répondu; n'est-ce pas?

LA COUR: Il veut les 'links'.

M. RANCOURT: Oui, alors, je veux parler de ces 'links'.

J'ai ici une autorité de la Cour Suprême qui parle justement des 'links' ---

LA COUR: O.k.

M. RANCOURT: --- et de leur sens et je veux vous donner ça. Je l'ai trouvé juste récemment.

Et Monsieur Dearden est très très au courant parce que c'est son domaine d'expertise. Il est très au courant de cette -- de cette décision.

MR. DEARDEN: Wrong case.

M. RANCOURT: Pardon?

MR. DEARDEN: Wrong case.

M. RANCOURT: Oh!

MR. DEARDEN: *Crookes v. Newtown.*

M. RANCOURT: Oh! Ça c'est 'Litigation Privilege'.

Je vous ai donné le mauvais, je veux vous donner celui-là plus tard. Je m'excuse.

Ah, le voici. Excusez-moi. Monsieur Dearden a -- je vous ai donné le -- la mauvaise autorité pour l'argument que je suis en train de faire. Je vais vous la redonner dans quelques instants. Je m'excuse.

Je m'excuse parce que j'ai des 'folders' ici puis je me suis trompé.

Alors, voici, j'ai trouvé la bonne.

Donc, je disais que Monsieur Dearden est très au courant de ça. Il l'a même nommée, *Crookes v. Newton*. Donc, c'est pas une nouveauté pour lui et j'aimerais aller à la page 4 de cette décision, s'il vous plaît.

MR. DEARDEN: That's the head note.

M. RANCOURT: Donc, on est en train de parler de la décision de la Cour Suprême qui est *Crookes v. Newton 2011*.

Et si on va à la page 4, on parle de ce qu'on appelle des 'hyperlinks'; n'est-ce pas?

LA COUR: C'est ça qu'y parle, la petite chose en bleu là c'est le courriel.

M. RANCOURT: Exactement.

LA COUR: C'est ça? C'était ça?

M. RANCOURT: Des 'hyperlinks'.

LA COUR: On pèse là-dessus, on clique dessus ---

M. RANCOURT: Ça nous amène à l'endroit.

LA COUR: --- bing! Oui.

M. RANCOURT: Oui.

Alors, c'est -- la Cour Suprême dit la chose suivante sur le 'hyperlink', en bas de la page 4, la deuxième phrase dans le dernier paragraphe, en bas de la page 4, on dit:

« Hyperlinks and references both communicate that something exists, but do not, by themselves, communicate its content. They both require some act on the part of a third party before he or she gains access to the content. The fact that access to that content is far easier with hyperlinks than with footnotes does not change the reality that a hyperlink, by itself, is content-neutral.”

“... a hyperlink, by itself, is content-neutral.”

Et ensuite, la dernière phrase est très importante:

“Furthermore, ...”

ça c'est en haut de la page 5:

“Furthermore, inserting a hyperlink into a text gives the author no control over the content in the secondary article to which he or she has linked.”

“... no control ...”

Ce ne sont pas des informations qui sont dans mon contrôle. C'est très simple.

Alors, je vais vous expliquer, si vous

5 permettez, la question est purement technique.
Un hyperlink, l'autre mot pour ça c'est « URL,
Universal Resource Locator ». Un hyperlink
c'est un adresse qui nous 'point' vers un
continu ailleurs.

Cette adresse est spécifiée comme l'adresse d'une
maison: 168 Blackburn Avenue. C'est précis.
Une fois qu'on a l'adresse, on sait exactement
où aller.

10 Le code -- le code de ce 'link' -- le code c'est
des chiffres, des lettres et des symboles qui
nous disent exactement où aller pour trouver le
contenu.

15 Si quelqu'un me demande: « Donnez-moi le lien. »,
je lui donne le code qui représente cette
adresse. Avec ce code, il peut aller exactement
à l'endroit où est ce contenu.

20 Mais il y a un point très important, monsieur le
juge, c'est le suivant: il va aller à l'adresse
en ce moment aujourd'hui mais peut-être que la
maison a été rénovée depuis, peut-être que c'est
plus la même maison à cette adresse-là. Ils
l'ont peut-être démolie et construit autre
chose. Il y a pas moyen de savoir.

25 Je ne peux pas donner à Monsieur Dearden un
article qui existait quand on est allés à cette
adresse-là il y a deux ans parce qu'il y a pas
moyen de savoir si quelqu'un l'a changé ou pas.
J'ai aucun contrôle là-dessus. Ce n'est qu'un
30 adresse. Un lien que je mets dans un courriel
est une adresse pour aller à un endroit. À cet
endroit, il y a du contenu sur lequel je n'ai

aucun contrôle.

Et j'ai essayé longuement d'expliquer ça à Monsieur Dearden et il insiste pour ne pas comprendre, il insiste pour dire que: Vous allez me donner le contenu que vous avez lié. Mais le contenu que j'ai lié n'existe peut-être plus, j'ai aucun contrôle. Tout ce que j'ai donné, moi, dans mon courriel ou dans mon document c'est un adresse, un 'URL, Universal Resource Locator'; ou un 'hyperlink', c'est un autre mot pour ça.

Ce n'est qu'une adresse et je n'ai aucun contrôle sur le contenu et je n'ai pas l'article en question. Je n'ai pas ce contenu. Je n'ai jamais -- dans -- dans les cas que Monsieur Dearden me -- me pointe, je ne l'ai jamais eu, je ne l'ai pas et je ne peux pas lui fournir et je ne peux pas lui -- aller le chercher et lui dire: « Voilà ce qu'y était là à l'époque » parce que j'ai aucun contrôle là-dessus. Je ne le sais pas.

Donc, toutes les questions de Monsieur Dearden ---

MR. DEARDEN: That's incredible.

M. RANCOURT: --- à propos des 'hyperlinks' sont des questions impossibles. Je n'ai pas à faire un travail qui est un non-sens parce que ce ne sont que des liens.

Alors, quand Monsieur Dearden m'a demandé:

« Donnez-moi ce lien. », il y a -- il y a une subtilité.

Il y a une subtilité, voici -- voici, monsieur le

5 juge. Par exemple, si j'ai un courriel et il y a quelques mots puis y sont en bleu comme vous dites, n'est-ce pas, ils sont soulignés puis ils sont en bleu, il est possible quand je mets mon curseur sur ces quelques mots en bleu qu'on me montre le code de ce lien.

10 Peut-être que les mots qui sont soulignés ce n'est pas le code du lien. Donc, il faut connaître ce lien. Il faut connaître l'adresse et j'ai donné à Monsieur Dearden, dans tous les cas qu'il a demandés, le code précis qui correspond au lien qu'il recherchait et, la plupart du temps, le code lui-même était dans le courriel. C'était le bon code.

15 Et j'ai vérifié dans chaque cas et, pour chaque lien que Monsieur Dearden voulait, vous voyez dans les documents que j'ai mis dans mon affidavit j'ai donné les bons liens et je les ai tous donnés un après l'autre.

20 Je peux vous donner un exemple de ça. Si vous allez -- alors, on est dans la Question 478 où on veut le 'URL Code', alors, si vous allez à l'onglet 1B de mon affidavit et à la page 2 de ce document, j'ai donné pour la Question 478 et 25 479, vous voyez que j'ai répété la question et, ensuite, j'ai donné la réponse.

LA COUR: C'est parce que c'est -- à la Table 1B; c'est ça?

30 **M. RANCOURT:** Oui, 1B, à la page 2 de cet onglet. Alors, il faut aller passer les courriels qui présentent le -- que j'ai envoyé ça à Monsieur Dearden et, ensuite, à la page 2, vous voyez en

caractères gras il y a la question 478 et, ensuite, la Question 479 et là je donne une réponse et j'explique patiemment à Monsieur Dearden que un 'link' ou un 'hyperlink' qui apparaît comme tel c'est exactement la bonne adresse, que je n'ai rien d'autre à donner. Je vous donne la bonne adresse.

Et puis ---

LA COUR: Mais où sont ces adresses? C'est ça qu'y demande. Where -- où sont les adresses.

M. RANCOURT: Ah, dans le texte, par exemple:

« In the body of the e-mail, the links appear as ... »

Vous voyez ça? Et je mets: « http ... » ça c'est le code standard pour le début de l'adresse et, ensuite, il y a l'adresse précise et puis il y en a un autre qui commence: « http ... » ça c'est le code standard du début d'un adresse. C'est pour signifier que c'est une telle adresse.

Et je dis:

« The corresponding URLs, Uniform Resource Locators, are the same. These are the actual web addresses. I have verified the original electronic e-mail to confirm this. »

MR. DEARDEN: Yet, he won't print it out.

M. RANCOURT: Donc, j'ai -- j'ai vérifié précisément que c'était la bonne adresse, que c'est précisément cette adresse-là, qu'il l'a déjà l'adresse mais que je n'ai aucun contrôle sur le contenu. Je peux pas garantir que si vous allez à cette adresse ---

LA COUR: Votre -- votre point c'est ça peut

avoir changé?

M. RANCOURT: Bien sûr.

LA COUR: Puis ---

M. RANCOURT: Mon point c'est que je n'ai pas ---

LA COUR: Le contrôle de cette --- si c'est un autre -- un autre site web.

M. RANCOURT: Je n'ai pas le contrôle. C'est pas à moi, c'est à quelqu'un d'autre. C'est ailleurs. Ce n'est pas -- ce n'était pas attaché aux courriels ou aux communications, c'était un lien dans le courriel de la communication. C'était pas comme un attachement.

C'était pas un attachement physique ---

LA COUR: Non, non ---

M. RANCOURT: --- c'était une adresse qui est donnée.

C'est comme dire: 168 Blackburn Avenue.

LA COUR: Donc, est-ce ---

M. RANCOURT: Ben, la maison est pas attachée au document, c'est l'adresse.

LA COUR: Mais est-ce qu'avec -- avec cette adresse, est-ce que Maître Dearden peut aussi l'imprimer?

M. RANCOURT: Il peut aller avec cette adresse, aller exactement à la même place et il va trouver ce qu'y est là présentement, aujourd'hui ---

LA COUR: O.k.

M. RANCOURT: --- sans aucune garantie que c'est la même chose que qu'est-ce qu'y avait là y a deux ans quand le courriel a été envoyé.

LA COUR: Donc, vous ne savez pas c'était quoi?

M. RANCOURT: Personne contrôle ça.

LA COUR: Oui. Vous le savez ---

M. RANCOURT: Personne contrôle ça.

LA COUR: Vous le savez pas, là, y faudrait demander à les gens -- les personnes qui gèrent ces sites?

M. RANCOURT: Ça dépend, lien par lien, il faut qu'ils puissent affirmer qu'ils ont rien changé, que c'est la même chose, qu'ils ne se sont pas mis à l'utiliser pour autres choses.

Dans chaque cas, il y a pas de contrôle. Ce n'est qu'un adresse qui est mis dans le document. C'est tout ce que c'est.

LA COUR: O.k.

M. RANCOURT: Et la Cour Suprême a été obligée d'expliquer ça en détail et elle l'a fait très bien, je crois.

Donc, ça c'est toute -- et il y a plusieurs plusieurs questions de Maître Dearden qui sont des demandes. Il veut ces documents comme si c'était des attachements et je lui ré-explique et le ré-explique à chaque fois: Non, c'est un 'URL', c'est un 'hyperlink', il n'y a pas d'attachement.

Donc, ça c'est une question importante. Ça c'est donc la Question 478/479.

Ensuite, je crois qu'il a dit que j'avais répondu à 369; n'est-ce pas?

LA COUR: Oui.

M. RANCOURT: Donc, je vais le sauter.

Trois cent soixante-dix (370), il a dit, oui,

j'ai répondu; n'est-ce pas?

LA COUR: Trois cent soixante et dix (370) c'est -- c'est le 71; hein?

M. RANCOURT: Trois cent soixante-dix (370), il a dit « Oui ».

LA COUR: Trois cent quatre-vingt (380)?

M. RANCOURT: Trois cent soixante-neuf (369), trois cent soixante-dix (370) -- parce que trois cent -- le 370 est dans le texte. Il l'a pas -- il l'a pas mis dans la colonne mais c'est dans le texte là; vous voyez?

Si vous descendez dans la -- dans la colonne avec la question, vous allez voir un « 370 ».

LA COUR: O.k. Oui, oui.

M. RANCOURT: Donc, il a dit « Oui », je pense.

LA COUR: Oui.

M. RANCOURT: Il peut nous aider si il veut.

Trois cent soixante-et-onze (371), il a dit: « Oui », n'est-ce pas?

LA COUR: Oui, mais on devrait concentrer sur ---

M. RANCOURT: Oui, oui.

LA COUR: --- 380 que la réponse est « Non ».

M. RANCOURT: Exactement. Exactement.

Alors, 380, j'ai donné une réponse à l'onglet 1B, page 3. Vous êtes déjà à l'onglet 1B. Vous allez à la page 3, on parle de la page -- de la Question 380.

Alors, j'explique que, d'après moi, alors, la question était:

« But here's my question: She is asking you: 'Do you think I'm missing anything?' So, obviously, you have been in consultation

with her ..."

et cetera, et cetera.

Il -- donc, voici la situation -- si je peux me permettre de ---

LA COUR: Oui, oui.

M. RANCOURT: J'explique?

LA COUR: Oui.

M. RANCOURT: O.k.

Donc, il y avait un courriel de Mireille Gervais où elle me demande un conseil sur un courriel qu'elle va envoyer à Allan Rock et je lui ai donné conseil par rapport à ce courriel.

Ça avait rien à faire avec son rapport que je n'ai jamais vu avant qu'il soit rendu public.

Ça n'avait rien à faire avec ça mais la question de Monsieur Dearden est: De toute évidence, vous avez échangé à propos de son rapport, donc, depuis quand?

Et ma réponse c'est que: Non, je n'ai pas échangé à propos de son rapport.

C'est une question truquée. Elle est inappropriée cette question-là parce que je n'ai pas répondu et je dis ---

MR. DEARDEN: Where's your answer?

M. RANCOURT: Et je dis -- et je dis -- non, non, en affidavit, ici. Je dis:

« I never received ... »

Et ça, c'est dans mon affidavit, à la page 4, en haut de la page, je dis:

« I never received a prior copy of the SAC 2008 Report prior to this November 2, 2008 e-mail or any draft of any partial or whole.

I first read the SAC report after it was made public by the SAC and I never read any drafts, partial or whole, of the SAC 2008 Report."

Ça c'est en affidavit et j'ai juré que c'était vrai.

Donc, il n'y a pas -- j'ai déjà complètement répondu à ça. C'est une question inappropriée et, en plus, c'est une question qui fait une supposition qui est fausse.

C'est pas parce que j'ai donné un conseil sur comment dire quelque chose au Président que ça veut dire que j'ai eu des interactions pour créer ou ---

LA COUR: Un autre point -- juste pour ---

M. RANCOURT: Oui?

LA COUR: --- raccourcir c'est que la question: "So, obviously, you've been in consultation with her about the SAC Report before November 2nd ..."

et, selon vous, c'est pas le cas?

M. RANCOURT: C'est faux.

Et je dis sous serment, ici, je continue, je suis encore sous serment quand je réponds à ces questions et je l'ai mis dans mon affidavit ici, je dis: J'ai eu aucune consultation avec elle à propos de son rapport. J'ai ---

LA COUR: Selon vous, c'est répondu?

M. RANCOURT: Absolument.

LA COUR: O.k.

MR. DEARDEN: No, you didn't.

M. RANCOURT: C'est répondu dans ce document qui

est en affidavit.

MR. DEARDEN: He's never answered how much before November the 2nd that he had communication with Mireille Gervais. He won't tell me how much before.

M. RANCOURT: À propos du rapport. Votre question c'est à propos du record.

LA COUR: Gardez la voix. Gardez la voix.

M. RANCOURT: Ah, excusez-moi, c'est parce que c'est ---

LA COUR: Gardez la voix parce qu'on ---

M. RANCOURT: Excusez-moi, monsieur le juge.

LA COUR: O.k.

M. RANCOURT: À propos du rapport ---

LA COUR: Et, selon vous, vous l'avez répondu?

M. RANCOURT: Bien sûr. Bien sûr.

La question était: Depuis comment longtemps vous avez parlé avec Mireille Gervais à propos de son rapport?

Monsieur Dearden nous l'a expliqué. Je viens de dire: « Jamais. » J'ai pas eu rien à faire avec son rapport.

C'est complètement répondu cette question.

LA COUR: O.k.

O.k., prochain point.

M. RANCOURT: O.k.

Évidemment, j'ai eu des contacts avec Mireille Gervais à propos de d'autres affaires qui sont pas pertinentes parce qu'on est des amis. C'est tout.

Prochain point, je pense que le 698, j'avais répondu; n'est-ce pas?

Monsieur Dearden a dit que j'avais répondu.

LA COUR: O.k. Oui.

M. RANCOURT: Oui?

LA COUR: Oui.

M. RANCOURT: Question 707, j'ai répondu; n'est-ce pas?

LA COUR: Oui.

M. RANCOURT: Quatre-cent treize (413) aussi, j'ai répondu.

LA COUR: Oui.

M. RANCOURT: Cent quatre-vingt-dix-huit (198), aussi, répondu.

LA COUR: Oui.

M. RANCOURT: Deux cent vingt-deux (222), répondu.

LA COUR: Oui.

M. RANCOURT: Deux cent vingt-quatre (224)/deux cent vingt-cinq (225), répondu.

LA COUR: Oui.

M. RANCOURT: Deux cent vingt-huit (228)/deux cent trente (230) -- à deux cent trente (230), 229/230, tout ça c'est répondu.

LA COUR: Oui.

M. RANCOURT: Six cent trente-sept (637), mes notes sont pas claires.

LA COUR: T'as pas répondu.

M. RANCOURT: Pas répondu, o.k.

LA COUR: « Witness List », ça c'est une liste de témoins.

M. RANCOURT: O.k.

Alors, j'ai répondu dans -- à l'onglet 1B à la page 6. Si vous allez à la page 6 de mon

document -- parce que j'ai répondu point par point -- donc, l'onglet 1B, page 6, on est à la Question 637, um, oui, elle commence en bas de la page, je m'excuse.

Donc, Question 637, il y a le titre en bas de la page et ensuite, à la page 7, il y a une réponse et la réponse ---

LA COUR: C'est -- mais c'est là -- là vous disez que vous le savez pas.

M. RANCOURT: Exact.

LA COUR: Non, mais là -- mais là ---

M. RANCOURT: Si je sais pas, je peux pas répondre.

LA COUR: Oui, mais là, il y a une -- y faut répondre.

Pour les questions de -- de faits, les experts, ça c'est des -- il y a des règles spéciales ---

M. RANCOURT: Oui.

LA COUR: --- pour les experts. Donc, il y a des ---

M. RANCOURT: J'ai les règles ici ---

LA COUR: Tu peux les mettre avant ---

M. RANCOURT: J'ai les règles ici.

Pour un expert, on doit répondre.

LA COUR: Mais pour des témoins ---

M. RANCOURT: Pour des experts, on doit répondre. Voici la règle ---

LA COUR: Oui, mais tes témoins aussi, y faut répondre pour ---

M. RANCOURT: Y a pas de règle à cet effet-là et y a -- j'ai pas trouvé d'autorités qui traitaient de cette question-là. Je pense que y

a pas d'autorité qui dit qu'on doit donner nos témoins, surtout quand on les connaît pas.

MR. DEARDEN: Of course you do.

M. RANCOURT: Les -- normalement -- normalement ---

MR. DEARDEN: Mireille Gervais.

M. RANCOURT: C'est -- est-ce que Monsieur Dearden est l'autorité? Il dit: « Of course » mais y a pas d'autorité à cet effet-là et y a ---

MR. DEARDEN: It's the rule.

M. RANCOURT: --- y a pas de règle qui impose ça. La règle impose uniquement par rapport aux experts-témoins.

LA COUR: Mais il doit en avoir des règles là-dessus. Is there not a rule on this ---

MR. DEARDEN: Yeah, there is.

Now, you have to give the gist of ---

THE COURT: There is a rule.

MR. DEARDEN: --- of the witnesses that have the ---

THE COURT: And what -- "Will Say Statements". People give "Will Say Statements".

M. RANCOURT: He has to.

And, of course, he knows ---

M. RANCOURT: Non.

MR. DEARDEN: --- that Gervais is going to be a witness and he's just playing cute here and hiding who he's going to call.

THE COURT: I believe that's the rule.

M. RANCOURT: Ça c'est faux. C'est de la mauvaise caractérisation. C'est de la mauvaise

foi.

Je peux très bien ---

LA COUR: Mais, de toute façon, there's a Reply.
Il va avoir une réplique. Selon vous, c'est pas
nécessaire?

M. RANCOURT: Selon moi? Il y a pas de règlement
qui l'exige, il y a pas d'autorité qui l'exige
et je pense que, si on regarde les autorités qui
qui expliquent qu'est-ce qu'on doit répondre en
découverte, des choses qu'on ne sait pas encore,
qu'on n'a pas décidé encore, on n'est pas obligé
de -- de décider juste pour satisfaire notre
opposant.

C'est ridicule cette question-là, je pense.

THE COURT: I'm pretty sure there's a rule. Je
suis pas mal certain qu'il existe une règle à
ceci.

M. RANCOURT: Non, monsieur le juge.

LA COUR: C'est une pratique -- c'est de la
pratique ---

M. RANCOURT: Non, monsieur le juge, il y a
pas ---

MR. DEARDEN: I'll find the rules.

LA COUR: Mais on va ---

M. RANCOURT: Il y a pas de règle. Je pense que
si y en avait un, Monsieur Dearden le
connaîtrait très bien, il l'aurait cité.

Mais y a pas de règle -- en fait, la seule règle
c'est -- je l'ai ici: « Scope of examination »
pour 'discovery'. J'ai la règle ici si vous
voulez la regarder, monsieur le juge.

Et vous voyez ---

MR. DEARDEN: Well, yeah, that's it.

THE COURT: That's exactly it:

"A party on examination ... obtain the disclosure of names and addresses of a person ... reasonably expected to have knowledge of transactions ..."

Bon, c'est ça.

M. RANCOURT: C'est pas les témoins, c'est des personnes qui pourraient -- qui pourraient, de façon raisonnable ---

MR. DEARDEN: That's right.

M. RANCOURT: --- avoir des connaissances.

LA COUR: Bien, c'est exactement ---

MR. DEARDEN: He knew what I was asking, Your Honour.

LA COUR: C'est exactement ça.

C'est pas -- c'est pas que vous êtes obligé de les appeler comme témoins ---

M. RANCOURT: O.k.

LA COUR: --- ça c'est un autre -- ça c'est une question de procès mais y faudrait identifier les personnes qui auraient connaissance de -- pertinent à cette affaire ---

M. RANCOURT: O.k.

LA COUR: --- pis ce sont -- je sais, Maître Gervais (sic), si y a des questions de qui est-ce qui a -- quand est-ce que qu'y se sont rencontrés.

M. RANCOURT: Mais la façon que la question a été posée ---

LA COUR: Je sais pas, peut-être qu'y a d'autres personnes, peut-être qu'y en n'a pas. Je sais

pas.

M. RANCOURT: La -- la question m'a toujours été posée: « Quels sont vos témoins? »

LA COUR: Non, c'est pas un engagement à les appeler ---

M. RANCOURT: O.k., mais ---

LA COUR: --- mais il faut les identifier sont qui les gens qui auraient peut-être connaissance dans cette matière?

M. RANCOURT: Oui, o.k., dans ce sens-là, maintenant que je comprends, je ---

THE COURT: Witnesses, I don't think you have to give advance notice; do you? I don't believe so.

MR. DEARDEN: No.

THE COURT: You have to identify them and say what -- what's their knowledge ---

MR. DEARDEN: It's the identity that I wanted.

THE COURT: And their knowledge that that they may have.

MR. DEARDEN: The gist of the evidence that they could give.

THE COURT: The gist of the evidence.

M. RANCOURT: Mais

LA COUR: Ce sont -- ce sont ---
Mais là, vous pouvez ---

M. RANCOURT: Il a pas demandé cette question, il a demandé: « Qui sont vos témoins? » C'est tout. C'était ---

MR. DEARDEN: It said « potential witnesses ».

M. RANCOURT: C'était: « Qui sont vos témoins? Qui sont vos témoins potentiels? »

LA COUR: Bon, là, c'est clarifié.

C'est bien?

M. RANCOURT: Et ça va être une liste -- oui.

Donc, y a ça.

Donc, j'ai -- chu heureux d'avoir pu assister avec le règlement.

O.k., et ensuite, la Question 398: Quelle était la position de Monsieur ---

LA COUR: Donc, vous avez pas d'objection de fournir une liste des -- des personnes exactement qui ont des connaissances, et cetera, et cetera?

M. RANCOURT: Qui pourraient avoir des connaissances?

LA COUR: Oui?

M. RANCOURT: À ma connaissance ---

LA COUR: Oui.

M. RANCOURT: --- qui pourraient être utiles?

LA COUR: Oui.

M. RANCOURT: J'ai -- si le -- l'autre partie s'engage à faire la même chose, je suis prêt à le faire.

LA COUR: Mais y sont -- y sont obligés à le faire la même chose.

M. RANCOURT: Mais j'ai pas posé la question alors ---

LA COUR: Y sont obligés ---

M. RANCOURT: --- je sais pas si y vont le faire. Moi, ---

LA COUR: Non, non, ça c'est une obligation aux deux parties.

M. RANCOURT: Oui.

LA COUR: C'est pas une affaire ---

M. RANCOURT: Alors, si les deux parties -- si vous demandez aux deux parties de le faire, je suis heureux de le faire.

LA COUR: Bon. C'est les règles. C'est les règles, c'est pas -- oui, il faut les faire ---

M. RANCOURT: Merci.

LA COUR: --- les deux parties. Y faut suivre les règles.

M. RANCOURT: O.k., merci.

Parce que j'ai pas posé la question spécifiquement, alors, je veux pas que cette technicalité-là m'empêche d'avoir les mêmes informations. Vous voyez ce que je veux dire?

LA COUR: Mais si vous appelez pas ces témoins-là, c'est possible que Maître Dearden il peut décider -- il a pas de propriété dans un témoin. Donc, peut-être c'est favorable, peut-être c'est pas -- défavorable.

M. RANCOURT: Alors, ---

LA COUR: Mais ça c'est un autre affaire.

M. RANCOURT: --- monsieur le juge, juste pour être clair, j'aimerais ---

LA COUR: Je suis pas le juge de procès.

M. RANCOURT: Non, non, non, mais ---

LA COUR: Peut-être heureusement.

M. RANCOURT: --- j'aimerais qu'il y ait un ordre que les deux parties donnent une liste, l'un à l'autre, de témoins potentiels dans cette action.

LA COUR: Et leur faire un sommaire de leurs témoignages.

M. RANCOURT: Mais je pense que c'est trop tôt pour dire ça; non?

Est-ce que c'est -- parce que la règle -- la règle ne dit pas ça. La règle ne dit pas ça. La règle dit: Les noms et les adresses. C'est tout.

LA COUR: D'habitude, y donnent un « will say ».

M. RANCOURT: Non, ça c'est dans les cas criminels, monsieur le juge.

MR. DEARDEN: Your Honour, the rule has been interpreted such that you've got to give gist.

THE COURT: Give substance of what is being ---

MR. DEARDEN: Yes.

THE COURT: --- going to be given. That's my understanding.

M. RANCOURT: J'aimerais -- je connais pas une autorité qui dit ça pour un cas non-criminel. Je -- je ne connais pas.

LA COUR: Ça c'est pratique -- je -- c'est une pratique qui s'applique. J'ai pas ---

M. RANCOURT: Est-ce que Monsieur Dearden peut nous fournir une autorité pour ça?

LA COUR: C'est toujours la manière que -- d'après moi, que ça -- ça fonctionne.

M. RANCOURT: Dans les cas criminels mais ---

LA COUR: Donc, si vous voulez -- si vous avez un autre autorité au contraire, vous pouvez la -- m'envoyer.

M. RANCOURT: D'accord.

LA COUR: Je suis très confiant que c'est bien ---

M. RANCOURT: Je fais une note de ça.

LA COUR: Pis c'est raisonnable, là, de toute façon.

C'est raisonnable, si vous savez leurs connaissances et -- générales que c'est qui vont dire.

M. RANCOURT: Bien, de toute façon, les deux parties vont faire la même chose?

LA COUR: Oui. Exactement.

M. RANCOURT: O.k. O.k.

LA COUR: Oui. Oui.

M. RANCOURT: D'accord.

MR. DEARDEN: And, Your Honour, I would like -- if you are going to order Professor St. Lewis to answer a question she was never asked, I want his answers to come first.

He's had our expert report for months and I want to know who he's calling before we will -- if you so order -- provide the names and addresses and the gist of evidence of witnesses we will be calling.

I don't want him sitting back, again, waiting and then we get a week before trial and he's going to change his mind and think: Oh, I'm going to call these 14 other people as well.

M. RANCOURT: Non, c'est pas correct de ---

MR. DEARDEN: I want to know now ---

M. RANCOURT: -- de donner un avantage à un partie de cette façon-là.

LA COUR: Il faut donner -- oui, mais il faut donner toute la liste des ---

M. RANCOURT: On peut -- on peut ---

LA COUR: Vous avez demandé -- est-ce que vous

avez demandé cette question à Madame St. Lewis?

M. RANCOURT: Non, parce que, à mon sens, ma croyance c'est qu'on pouvait pas demander qui sont les témoins.

MR. DEARDEN: And Your -- Your Honour, Professor St. Lewis is just also advising me the problem with -- so we're objecting to him getting an answer -- again, this slippery slope, you know, like, he comes to a motion and then asks for an order on something that was never in play and that's the case with witnesses.

He asked Justice Beaudoin if I could go first on the examinations so that he could see what was asked when he then went into examination.

So he knew I was asking for the gist of the evidence of witnesses that are potential in this trial when he went into his discovery the next day. He didn't ask the question.

It would be a terrible slippery slope to allow him to get away with this but what Professor St. Lewis just reminded me of is that Mr. Rancourt defames all kinds of people that are, say, understanding that it is defamatory to call somebody a "House Negro".

And if he learns of names, he or Mr. Hickey are going to write a blog of some sort attacking them and he shouldn't be able to do that. He just shouldn't be able to do that. It's what he does. Is he defames other people. He looks for information.

Like on people like me, he searches for information to write about us ---

M. RANCOURT: Alors, je ---

MR. DEARDEN: --- in his blog ---

M. RANCOURT: --- je veux m'objecter, monsieur le juge.

MR. DEARDEN: --- because he doesn't care what he writes.

M. RANCOURT: C'est incroyable, monsieur le juge. J'espère que vous pouvez radier ces commentaires du -- de votre considération.

LA COUR: De toute façon, votre demande c'est que c'est Monsieur Rancourt qui va -- your request is that Mr. Rancourt will give his list of potential witnesses and the gist of their evidence before you give your list of potential ...

You both have to do it in any event; isn't that it? That's the rules; isn't it?

MR. DEARDEN: No, I don't think so, Your Honour. You have to ask the question. You're allowed to ask the question on discovery ---

THE COURT: Right.

MR. DEARDEN: --- and you're entitled to the gist of the evidence if you ask for it.

THE COURT: But I'm ---

MR. DEARDEN: I did, he didn't.

THE COURT: --- I'm leaning towards -- I'm leaning towards not having anyone taken by surprise and that the -- the fact that he's a self-rep, if he's to go first, I think there shouldn't be any surprise when you get to trial. This is the whole point of the discovery is so you're not taken by surprise.

C'est la -- le but.

M. RANCOURT: Oui.

LA COUR: L'objectif.

M. RANCOURT: Oui.

Monsieur le juge, je -- je suggère que on donne nos listes en même temps et qu'on vous les donne et que vous nous les donnez comme ça une personne attend pas. On vous les envoie et vous nous les donnez.

LA COUR: Non. Non, ça c'est pas -- ça, je vais y en penser. Je vais y en penser. O.k.

M. RANCOURT: Parce que je trouve ça injuste qu'il décide -- ayant vu ma liste, qu'il décide parce que la règle est: toutes les personnes qui pourraient avoir des informations utiles. Pas toutes les personnes que vous choisissiez de divulguer à l'autre une fois que vous avez vu sa liste, c'est toutes les personnes qui pourraient.

On vient de lire la règle; n'est-ce pas?

Alors, j'admets pas que Monsieur Dearden puisse avoir cet avantage de décider une fois qu'il a vu ma liste.

MR. DEARDEN: Exchange the list simultaneously, Your Honour.

M. RANCOURT: Oui, c'est ce que je ---

THE COURT: Okay, simultaneously?

M. RANCOURT: C'est ce que je dis.

THE COURT: I don't know if I want to have to have them to me.

M. RANCOURT: Est-ce qu'on pourrait l'envoyer au Régistraire?

MR. DEARDEN: Why?

THE COURT: No, I don't believe ---

M. RANCOURT: Pour que ça soit simultané.

MR. DEARDEN: Four (4:00) p.m. on whatever date.

THE COURT: But ---

M. RANCOURT: Simultané. Je serai peut-être pas là ---

LA COUR: Mais y veut pas que -- y veut pas que -- sa liste est là pis y a pas le -- le tien.

Ouin, send them to the Registrar by 4:00 o'clock?

M. RANCOURT: Oui.

THE COURT: Is that a way of doing it?

M. RANCOURT: Oui.

MR. DEARDEN: Well, it is a way, Your Honour, but we don't have to. We just send it to each other.

M. RANCOURT: Non, parce que, avec les courriels c'est très -- c'est très particulier. Il faut être là puis il faut frapper en même temps puis l'autre personne essaie de voir avant ou je sais pas quoi.

Pour éviter toutes ces questions-là ---

THE COURT: I can't see there's going to be a major -- if you want to do it to the Registrar, fine.

M. RANCOURT: Merci.

THE COURT: Let's do it that way.

M. RANCOURT: Merci.

THE COURT: Mr. Hickey, I didn't allow you Intervenor status. I see you're standing.

MR. HICKEY: Yeah, I simply object to being identified in court. I don't think that's fair

as a member of the public that's here to observe that ---

THE COURT: Well, I thought you were standing up ---

MR. HICKEY: --- Mr. Dearden pointing to me ---

THE COURT: I thought you were standing up to object that's why I addressed you. You're not objecting to me ---

MR. HICKEY: I simply don't -- I would appreciate not being identified by Mr. Dearden saying that I'm going to attack people. I think that's prejudicial to me. I'm here to observe, as a member of the public. I don't think that's fair.

MR. DEARDEN: Well, stop writing nasty things about people, Mr. Hickey.

MR. HICKEY: That's again identification. I don't think that's fair, Your Honour. I -- I would just ask that he fix that, please.

THE COURT: Well, there's not much I can do, it's privileged what's said in a courtroom and as you probably all well know so ... Let's move on to the next point.

M. RANCOURT: Oui.

Donc, on a réglé la question des témoins. C'était la Question trois cent -- 637; n'est-ce pas?

LA COUR: Oui, c'est ça.

M. RANCOURT: Et puis, donc, c'est la même question 398, 404. Je pense que c'est toute la même question.

Est-ce que je me trompe?

Y veut savoir si, potentiellement, je vais appeler Mireille Gervais.

Ma réponse c'est: Oui, potentiellement, je vais appeler Mireille Gervais.

LA COUR: Je pense ça s'applique à toutes les -- ces sections-là.

M. RANCOURT: Oui.

THE COURT: Doesn't that apply to that whole section, it appears? It's all about witnesses; is it not?

M. RANCOURT: Alors, je veux signaler une petite erreur dans le ---

THE COURT: So, yes, that will apply -- there will be an order to that effect ---

M. RANCOURT: Oui.

THE COURT: --- and I'll -- as we -- tel qu'on a discuté ---

M. RANCOURT: Oui.

LA COUR: Donc.

M. RANCOURT: Merci.

THE COURT: That I can ---

M. RANCOURT: Alors, on est rendu à la Question 637 et je veux juste pour pas qu'il y ait d'erreur signaler -- j'ai signalé ici:

« This is a repetition of the same question in the Incident Refusals Chart. See above. »

C'est une erreur typographique, je pense. Monsieur Dearden a mis deux fois la même question.

MR. DEARDEN: --- to Section B.

THE COURT: Yeah. Let's -- that's -- I agree but let's go to the next section B.

M. RANCOURT: O.k.

Ensuite, « see Defendant's Motion Record » ---

THE COURT: Litigation I think ça pas été répondu.

M. RANCOURT: « Other witnesses ».

Donc, 647/48 c'est la même chose; n'est-ce pas?

Ensuite, 567, ça déjà été répondu?

LA COUR: Oui.

M. RANCOURT: Oui?

Et donc, là, on va à 571/572?

LA COUR: Oui.

M. RANCOURT: Et vous avez -- vous voyez ma -- ma position ici, je dis:

« Improper question, meant solely to attack the Defendant's character. »

et là, je cite la règle 31.06.1 -- et j'ai la règle ici -- en fait, je vous l'ai donnée, je crois.

Est-ce que c'est cette règle-là que je vous ai donnée tantôt? Ah, je l'ai perdue là.

Où est cette règle-là?

MR. DEARDEN: What was the rule?

M. RANCOURT: C'est la règle -- je cite la règle 31.06.1 et je n'arrive pas à trouver ma copie de cette règle. Où est-ce que je l'ai mise?

MR. DEARDEN: Here.

M. RANCOURT: O.k.

MR. DEARDEN: Have mine.

M. RANCOURT: Trente et un point zéro six un (31.06.1). Oui.

Alors, dans cette règle, on dit:

« A person examined for discovery shall

answer to the best of his or her knowledge,
information and belief any proper question
relevant to any matter in issue in the
action or to any matter discoverable by sub-
rules and no question may be objected to on
the grounds that:

the question constitutes cross-examination ..."
dans (b):

"... unless the question is directed solely to
the credibility of the witness."

Donc, les questions qui attaquent le caractère et
la crédibilité du témoin ne sont pas permises
pendant les examens pour la découverte; n'est-ce
pas?

THE COURT: Non, il demande si vous avez -- vous
avez suivi l'avis de diffamation ---

M. RANCOURT: Il demande si j'ai suivi la loi,
monsieur le juge.

LA COUR: Oui. Puis est-ce que le ---

M. RANCOURT: C'est écoeurant de demander une
telle chose.

LA COUR: Donc, selon vous, la réponse est
facile: Oui.

M. RANCOURT: Bien sûr, mais -- mais ---

LA COUR: Bon.

M. RANCOURT: Mais c'est une question aberrante.
Il -- c'était uniquement pour me -- attaquer mon
caractère qu'il a demandé cette question-là.

LA COUR: Non, mais c'est ça.

MR. DEARDEN: No. Was he asking him: What did
he do then? What's he held?

I have a lot of follow-up questions to that.

LA COUR: Bon.

M. RANCOURT: J'ai déjà répondu.

LA COUR: O.k.

M. RANCOURT: Ensuite, 629/630.

Je veux citer une autorité par rapport à
'Litigation Privilege'.

LA COUR: C'est ça, « Take Down Notices »?

M. RANCOURT: Non, on est ---

LA COUR: Vous êtes rendu à la page 14?

M. RANCOURT: On est à la question -- page 14 de
mon résumé et c'est la Question 629/630.

LA COUR: Oui, c'est ça.

Ça c'est F, hein, section F?

M. RANCOURT: Um, oui.

O.k., alors, il veut savoir:

« You took that down why? »

et cetera; n'est-ce pas?

Et je veux donc donner l'autorité par rapport à
'Litigation Privilege' qui est l'autorité --
c'était pas la bonne autorité que je vous ai
donnée tantôt mais là je vais tenter de vous
donner la bonne. Voici.

Et dans cette autorité, on dit les choses
suivantes et je vais aller à mon factum pour --
parce que je l'ai mieux cité là; c'est-à-dire
que, là, je vais avoir du mal à le trouver si je
vais pas à mon factum. Où est-ce qu'il est mon
factum?

(COURTE PAUSE)

MR. DEARDEN: You don't have a factum.

M. RANCOURT: Est-ce que y avait pas de factum?

Ah, o.k., c'était le ---

LA COUR: C'est dans votre motion.

M. RANCOURT: Ah non, c'est le factum dans le --
le refus de Mireille Gervais, j'avais -- c'est
juste pour me permettre de trouver la bonne --
la bonne chose. Excusez-moi.
O.k., je pense que ça c'est ...

(COURTE PAUSE)

M. RANCOURT: Ah, j'ai un lapsus là parce que
j'ai pas indiqué où c'était mais vous -- o.k.,
excusez-moi, il se fait tard là. Je l'ai ici en
quelque part.

LA COUR: Vous êtes à la page 7 de votre --
onglet 2(b). Selon vous c'était conseil de
votre avocat.

M. RANCOURT: Ah, je l'ai trouvé. Je l'ai
trouvé.

LA COUR: C'est vous avez demandé et que c'est
'privileged'.

M. RANCOURT: Je pense que je l'ai trouvé ici.

THE COURT: He's not asking -- il demande pas des
-- des conseils juridiques, il demande pas ces
conseils juridiques c'est pourquoi -- c'est
pourquoi il vous a amené ---

M. RANCOURT: Il demande les détails ---

LA COUR: --- jusqu'à ---

M. RANCOURT: Il demande les détails ---

LA COUR: Pourquoi. Il dit c'est quoi le fait
qui a changé pour que tu enlèves cette
allégation?

M. RANCOURT: Ça serait quoi un exemple d'un tel
fait? Je -- parce que il y a le -- il y a le
post ---

LA COUR: Mais lui y -- explore la question de ce que vous avez -- pourquoi vous avez pas enlevé ces -- ces avis dans votre blog?

Ça peut-être en mitigation ---

M. RANCOURT: Non, il demande pourquoi je l'ai enlevé dans ce cas-ci.

LA COUR: Oui, c'est ça. Et pas dans l'autre.

M. RANCOURT: Et le ---

LA COUR: C'est le fait que ---

M. RANCOURT: Alors, si j'ai -- j'ai une discussion avec l'avocat du syndicat et on discute de pourquoi je vais enlever ça, toute cette discussion-là est privilégiée.

LA COUR: Donc, c'est ---

MR. DEARDEN: No, Your Honour, I'm asking for the facts that gave rise ---

M. RANCOURT: C'est quoi ---

MR. DEARDEN: --- to that legal advice ---

M. RANCOURT: C'est quoi un exemple?

MR. DEARDEN: --- which is not privileged.

M. RANCOURT: C'est quoi un exemple?

LA COUR: Mais, lui, y dise que, mettons, son avocat m'a avisé de le faire.

M. RANCOURT: Oui.

LA COUR: C'est ça votre réponse?

M. RANCOURT: Oui.

Je comprends pas c'est quoi les faits qu'il veut. Mon avocat m'a suggéré de le faire et c'est tout.

MR. DEARDEN: What happened at his labour grievance hearing when they next met after he published that they were against bilingualism?

What factually happened there that his lawyer told him: "Take it down."?

And he knows, Your Honour, exactly what I'm getting at.

M. RANCOURT: Monsieur Dearden semble avoir plus d'information que moi.

MR. DEARDEN: Well, you know why you had to take it down, sir.

What facts? Not legal advice.

M. RANCOURT: Il veut -- il veut -- je -- il veut -- je sais pas ce qu'il veut. Il veut que je dise la communication que j'ai eue avec cet avocat.

LA COUR: Non.

M. RANCOURT: Les raisons.

LA COUR: Non, pas les -- pas les -- pas l'avis conseil, c'est quelque chose a passé dans votre -- je sais pas ---

M. RANCOURT: Mais peut-être que Monsieur Dearden peut nous dire qu'est-ce qu'y s'est passé et comment il le sait ou je sais pas quoi.

LA COUR: Moi -- moi, je ne le sais pas si y a des faits de quelque chose qui s'est passé ---

M. RANCOURT: Et en quoi c'est pertinent à la cause de diffamation?

On est loin loin de la cause de diffamation là. On est très loin.

MR. DEARDEN: Because he took down -- he took down that blog that served his self-interest ---

M. RANCOURT: Pour des raisons différentes.

MR. DEARDEN: --- because it's his labour case that he's suing for hundreds of thousands of

dollars in and he didn't take down the one that he dealt with Master MacLeod's proceeding. That's malice. That's aggravated damages, that's punitive damages.

You won't take down what you write that's false.

LA COUR: C'est ça. C'est ça qui est l'allégation.

M. RANCOURT: O.k., mais je comprends toujours pas ce qu'il veut comme réponse.

MR. DEARDEN: Yeah.

M. RANCOURT: J'ai eu une discussion avec mon avocat -- l'avocat du syndicat, j'ai pas à dire la nature de cette discussion ou qu'est-ce qu'on a discuté.

Et si -- si mon avocat m'a dit: « Pour ces raisons-ci qui sont des faits, tu vas faire ça. », j'ai pas à dire qu'est-ce qu'il m'a dit, qu'est-ce qu'il m'a dit qu'étaient les faits d'après lui.

J'ai pas à dire que, moi, je pensais qu'un autre fait était moins important. J'ai pas à dire quels sont les faits parmi tous les faits possibles dans l'univers qui -- qui étaient pertinents dans notre discussion.

Tout ça c'est 'Litigation Privileged' ou « Solicitor/Client » dans ce cas-ci parce que c'est le syndicat de -- du -- c'est l'avocat du syndicat.

Monsieur Dearden creuse beaucoup trop loin. Il ne peut pas briser cette barrière de 'Litigation Privilege' malgré ses meilleurs efforts.

Je pense qu'il n'est pas raisonnable dans cette

-- dans cet argument.

LA COUR: O.k., nouveau point, prochaine?

M. RANCOURT: O.k., um, 722/723, il dit que je n'ai pas répondu -- si je comprends bien.

LA COUR: C'est ça.

M. RANCOURT:

« ... want to know what are the true facts that you relied on to support your plea of a defence of fair comment ... »

J'ai déjà répondu à cette question-là et j'ai déjà dit que les choses sur lesquelles je vais -- je vais me -- me baser c'est les deux rapports, les documents Accès à l'information ---

LA COUR: Non, donnez pas les réponses à moi.

M. RANCOURT: Oui, mais j'ai déjà ---

LA COUR: Il faut -- il demande ---

M. RANCOURT: --- tout dit ça.

LA COUR: Il demande des réponses.

M. RANCOURT: Je ne sais pas quoi -- quoi de plus que Monsieur Dearden veut.

LA COUR: O.k., donc, si -- mais tu vas y ---

M. RANCOURT: J'ai déjà répondu à ça.

LA COUR: Tu vas être lié avec votre réponse; vous comprenez?

M. RANCOURT: Oui.

LA COUR: Ça c'est -- d'avoir un conseil juridique objectif, impartial dans ces choses pour vous et dans cette action, ça serait une bonne chose.

Je comprends qu'il y a des coûts mais ce serait une idée.

M. RANCOURT: J'ai -- j'ai répondu -- par exemple, dans ce cas-ci ---

LA COUR: No ---

M. RANCOURT: --- j'ai répondu.

LA COUR: I don't think ---

MR. DEARDEN: No, Your Honour, he's not understanding the law.

THE COURT: I don't think you understand -- je crois tu comprends pas ---

MR. DEARDEN: It's the facts in the article.

LA COUR: C'est ça.

MR. DEARDEN: It's that piece ---

LA COUR: C'est dans votre article.

MR. DEARDEN: These set of documents and the two reports ---

LA COUR: Oui.

M. RANCOURT: --- are evidence.

LA COUR: Oui.

M. RANCOURT: I want to know the facts in the two articles in issue that he says are true facts and I want to know what the opinion is that he says are the statements in there are opinion. He has to identify those.

He can't just say: I'm relying ---

M. RANCOURT: J'ai deux ---

MR. DEARDEN: --- on the SAC Report.

M. RANCOURT: J'ai deux -- j'ai deux réponses.

LA COUR: C'est ça.

M. RANCOURT: Un, je le sais pas parce que j'ai pas eu l'occasion de me pencher sur cette question-là.

LA COUR: Vous pouvez y en pencher parce que

c'est ---

M. RANCOURT: Oui, avant -- avant le procès, je devrai me pencher mais ---

LA COUR: Non, non, non, non.

M. RANCOURT: --- je me suis ---

LA COUR: Bien avant ça. Bien avant ça; tu sais?

M. RANCOURT: Mais ---

LA COUR: Il a droit à ses réponses.

Donc, je vous entends mais on est déjà passé à travers ça depuis -- on a passé un 15/20 minutes sur cette question-là.

M. RANCOURT: Je pense pas qu'il a droit à ces réponses avant le procès.

LA COUR: C'est comme -- c'est comme la question de négligence.

M. RANCOURT: Je pense pas qu'il a droit à ces réponses avant le procès. Ça s'appelle 'Litigation Privilege' et j'ai ---

THE COURT: On the ---

M. RANCOURT: --- et j'ai le droit ---

THE COURT: On the facts of basic -- of fair comments.

M. RANCOURT: Il ---

LA COUR: Sur les faits de ---

M. RANCOURT: Il va aller en premier et il va dire: Ça c'est diffamatoire.

Et, ensuite, moi, je dois me défendre.

LA COUR: Non, il a le droit de savoir.

Si vous avancez la phrase de 'Fair Comment', c'est quoi est-ce qui est opinion. C'est ça qui -- qu'y veut vous dites: Oui, c'est vrai.

Selon vous, je sais pas là, que -- vous faites

une allégation que le -- Madame St. Lewis a agi dans un complot avec Allan Rock.

M. RANCOURT: Non.

LA COUR: Je sais pas que c'est quoi les faits. Je sais pas exactement.

M. RANCOURT: Mais vous avez pris ça de Monsieur Dearden.

J'ai jamais fait l'allégation que Madame St. Lewis était impliquée dans un complot ---

LA COUR: Quels faits que vous pouvez conclure qu'elle a agi comme « Allan Rock's House Negro »?

J'imagine que c'est ça votre opinion. Je vous dis c'est pas la réponse mais ---

M. RANCOURT: Oui, je ---

LA COUR: --- c'est quel fait que vous vous basez sur ça? Qu'est-ce qui est vrai?

M. RANCOURT: J'aimerais voir une autorité ---

LA COUR: That's the -- ça c'est une question ---

M. RANCOURT: --- où je suis obligé de dire ---

LA COUR: Non, non. Non, c'est sur ---

M. RANCOURT: --- mon cas en détail ---

LA COUR: Non, c'est pas votre cas.

M. RANCOURT: --- à l'époque des découvertes.

LA COUR: Non, y sont quoi les faits? Sont quoi les faits, selon vous? C'est ça qu'il demande.

Am I right? Is that what you're asking for?

M. RANCOURT: Il a le droit de voir les évidences, il a pas le droit de voir mes arguments.

LA COUR: Non, non, non, non, non, non, non. O.k., mais j'ai eu votre point. Merci pour.

Prochaine?

M. RANCOURT: Ensuite, la 723/24, est-ce qu'il a dit qu'il avait répondu -- que j'avais répondu?

MR. DEARDEN: No. No, you didn't answer:

"What words complained of you say are true facts?"

LA COUR: C'est ça.

MR. DEARDEN: For your truth defence.

M. RANCOURT: O.k.

Donc, moi, je dis que ça c'est ---

LA COUR: C'est le même qu'on entend.

M. RANCOURT: --- privilégié par 'Litigation Privilege'.

LA COUR: O.k.

M. RANCOURT: Ensuite, 724/725, est-ce que j'ai répondu ou pas?

LA COUR: Non.

M. RANCOURT: Ça c'était quoi?

LA COUR: Les mots qui sont « comments » ---

M. RANCOURT:

« List of words complained of ... »
c'est la même chose; n'est-ce pas?

LA COUR: Oui.

M. RANCOURT: C'est une -- donc, c'est des choses que je n'ai -- je ne sais pas encore. Je peux pas répondre.

Et ensuite, ici:

« I'm asking you to create it ... »
Alors, il veut que -- la question 725 c'est quoi déjà?

« ... documents and true facts telling me ... I need you to identify for me and the same with

the truth defence, sir, that you see just above 'Fair Comment Defence' ... I want to know the words ... I know -- I'm asking you to create it."

Alors, moi, je -- moi, je pense que -- alors, ça c'est quelque chose qui s'est passé dans -- dans l'examination.

Monsieur Dearden ne m'a pas donné la chance de répondre. Il m'a examiné pendant sept heures et, quand j'ai offert de répondre à des questions, y dit: Non, je vais mettre mes questions sur le record. Bang, bang, bang, bang, bang, bang, bang.

Et ça, je cite -- je cite ça dans -- dans mes documents là où il me donne pas la réponse -- la chance de répondre alors je dis: Non, je vais répondre. On va regarder les documents ensemble et je vais répondre.

J'ai offert de répondre à ces questions-là pendant l'examination mais il a dit:

« Non, vous allez créer un document parce qu'on n'a pas le temps et vous allez faire ça ... »

MR. DEARDEN: Your Honour?

M. RANCOURT:

« ... en plus des sept -- des sept heures. »

MR. DEARDEN: I object.

He has just told the Court that he was prepared to give me that answer of:

"What are the true facts and what are the comments ..."

at discovery and he just told you that he doesn't

have the answer to that today. He just told you that.

M. RANCOURT: J'étais prêt -- j'étais prêt à penser ---

MR. DEARDEN: Because he doesn't know what facts ---

M. RANCOURT: J'étais prêt à regarder et à essayer de penser pour donner un -- un début de réponse à Monsieur Dearden et il m'a coupé, il m'a pas laissé répondre.

LA COUR: O.k., mais de toute façon, vous -- vous avez -- vous avez eu un peu de temps pour y en penser.

M. RANCOURT: Non, j'ai pas eu une seconde pour y penser.

LA COUR: Bien -- non, non, mais ça -- ça va depuis -- ça s'est passé au mois d'avril; hein?

M. RANCOURT: J'aimerais ---

LA COUR: Donc, t'as eu six mois, là -- six mois -- sept mois à penser.

O.k., c'est bien. Prochaine ---

M. RANCOURT: J'aimerais aller ---

LA COUR: Prochaine item.

M. RANCOURT: Oui.

J'aimerais vous montrer dans le 'transcript' où j'ai ---

LA COUR: « A truth is a defence » mais là si c'est basé sur la vérité, il faut dire c'est quoi les faits qui sont vrais sur lesquels vous avez ---

M. RANCOURT: Um, monsieur le juge ---

LA COUR: --- fait ces conclusions-là. C'est ça

qu'y demande.

M. RANCOURT: --- j'ai déjà dit sous serment que je n'utilise pas la défense de « truth ». Ça c'était ---

LA COUR: « Truth is not a defence »?

M. RANCOURT: Non, je ne l'utilise pas. Je n'utilise pas ça comme défense.

MR. DEARDEN: Your Honour, in paragraph 58 of his Statement of Defence is 'Defence of Truth' and he says:

"... the statements were -- if the statements were defamatory in law which is denied, the Defendant relies on the 'defence of truth' for all statements as entire statements in their context. The statements made as questions are true questions. The statements of explicitly expressed opinion are true statements of opinion."

And paragraph 59 is a short "Fair Comment Defence" where he just says: "It's fair comment."; okay?

M. RANCOURT: Donc, il vient de lire exactement ---

MR. DEARDEN: He's pleaded it.

M. RANCOURT: --- ce que j'ai dit et vous voyez que -- et je l'ai expliqué à Monsieur Dearden dans le document qui est ici, j'ai dit les opinions sont des vraies opinions.

C'est parce que je comprenais pas la différence entre « truth » et puis « opinion ».

Moi, j'ai dit ces documents-là suggèrent que Madame St. Lewis a agi comme le « House Negro »

de Allan Rock.

Ça c'est mon énoncé précis et j'ai dit cet énoncé-là est vrai. Ces documents-là suggèrent.

LA COUR: Quels documents? Ce sont que ---

M. RANCOURT: C'était les documents -- c'était les documents d'Accès à l'information.

Ils savent très bien c'est quels documents, on les a regardés ensemble ce matin, en détail ---

LA COUR: Bon, c'est que -- bon, bien, c'est ça, mais c'est à vous à expliquer, basé sur ces faits ---

M. RANCOURT: Oui.

LA COUR: --- ici ---

M. RANCOURT: Oui.

LA COUR: --- ce sont les faits que tu te bases.

M. RANCOURT: Oui.

Pour une défense de 'fair comment'. Je n'ai pas ---

LA COUR: Mettons quelqu'un c'est un fraudeur.

M. RANCOURT: Pardon?

LA COUR: Si quelqu'un c'est un fraudeur, vous faites une allégation quelqu'un c'est une fraude.

M. RANCOURT: Oui.

LA COUR: Donc -- pis la défense c'est que c'est vrai. C'est vrai que c'est un fraudeur.

Y vont dire: O.k.

M. RANCOURT: Oui.

LA COUR: Sur quoi vous vous basé pour dire c'est un fraudeur?

On va dire: Bon, il a volé telle telle chose ou y fait cette fausse déclaration. Y a signé un

État d'impôts ou y a pris du 'cash' ou quèque chose. Je sais pas.

M. RANCOURT: M'hm.

LA COUR: Y faut donner la -- sont quoi les faits.

M. RANCOURT: Mais j'ai ---

LA COUR: Si vous faites cette allégation ---

M. RANCOURT: --- j'ai dit en affidavit -- j'ai expliqué ---

LA COUR: --- quels faits vous vous basez?

M. RANCOURT: Oui.

LA COUR: O.k., next point. Next point?

M. RANCOURT: O.k., mais je -- Monsieur Dearden caractérise mal les choses parce que je lui ai expliqué en affidavit que je me base pas sur la défense de vérité.

C'était une mécompréhension ---

LA COUR: Non, ---

M. RANCOURT: --- de ma part, j'ai ---

THE COURT: Well, clarifie that, I don't know, a 'fair comment' with no 'truth' is not much of a fair comment ---

M. RANCOURT: Non, non, non, non, non. Non, non, non.

« Vérité » c'est une chose, 'fair comment' c'est autre chose. 'Fair Comment' est basé sur des faits. Y a des faits sur lesquels on s'appuie pour faire le 'comment'.

LA COUR: Mais là c'est à vous à l'expliquer y sont quoi les deux: « What are facts and what are your opinions? ».

M. RANCOURT: M'hm.

THE COURT: That's it.

M. RANCOURT: O.k.

Où est-ce qu'on est rendus? Cent sept (107)?

LA COUR: L'adresse de 'Google blogspot'.

M. RANCOURT: Um, 107?

LA COUR: L'adresse ---

M. RANCOURT: O.k.

LA COUR: --- j'imagine c'est pas dans les ---

M. RANCOURT: Donc, ça c'était pas répondu; hein?

LA COUR: Oui.

M. RANCOURT: O.k.

Monsieur le juge, ça va vous surprendre mais j'ai aucune idée où le 'blog' réside physiquement, sur quel continent, dans quel ordinateur, dans quel pays, dans quel état. J'ai aucune idée.

Monsieur Dearden veut que je vous dise ça. Je ne sais pas comment les corporations organisent leurs affaires. Je ne sais pas quelle corporation appartient 'blogspot'. Je me suis jamais posé la question.

J'ai aucune connaissance de ça et il n'a pas à m'obliger à faire une recherche pour dire sous serment quelque chose que je ne sais pas et que je n'ai pas d'information première là-dessus.

LA COUR: Bon, bien, réponds-lui de même.

M. RANCOURT: Je lui ai dit ça déjà.

LA COUR: Bon, bien là, je vois pas de réponse.

M. RANCOURT: Bien, elle est ici. Elle est -- je -- je me réfère à l'onglet 1(b), pages 8 et 9.

Alors, vous allez à la page 8 et 9, 'Google blogspot' et je dis:

« I have no knowledge or belief about these

5 questions. Resolving corporate ownership and control is a complex matter as is obtaining corporate information about actual locations and schedules of active storage media. If the Plaintiff claims that obtaining such information is simple then I welcome the initiative on the part of the Plaintiff. My 'Limitation Period' defence will not rely on evidence but the physical -- about the physical location ..."

10 et cetera. Vous voyez ça?

LA COUR: Hum?

M. RANCOURT: Vous le voyez?

LA COUR: Oui.

15 **M. RANCOURT:** Et je retire le dernier paragraphe et dans ce -- dans ce document que vous avez à la page 19, je dis:

« Defendant now rescinds from his statement. My 'Limitation Period Defence' will not rely on evidence about physical location ..."

20 parce que c'était pas nécessaire de dire ça et je -- je me rétracte de cette position-là mais je garde la position que je ne sais pas et que c'est pas facile de le savoir.

25 **LA COUR:** Excusez, est-ce que une 'limitation' c'est dans -- une prescription, ça fait partie de votre défense ou non?

M. RANCOURT: Oui.

LA COUR: Et ça fait partie de votre défense?

30 **M. RANCOURT:** Oui, c'était une -- une limitation dans le temps que j'avais argumenté dans mon 'Statement of Claim'.

LA COUR: O.k.

M. RANCOURT: Um, 'Statement of Defence', je veux dire.

Mais pour répondre à cette question ---

MR. DEARDEN: He only gets it, Your Honour, if it's a station in Ontario per Section 7.

Broadcast from a station in Ontario, Section 7, *Libel and Slander Act* which is Tab 6 of the Book of Authorities.

M. RANCOURT: Très bien mais si je le sais pas, je peux pas répondre.

LA COUR: Mais la question peut-être c'était:

Est-ce que c'est en Ontario, selon vous?

Vous savez pas si c'est en Ontario, donc, vous pouvez pas le prouver.

M. RANCOURT: Où est 'blogspot'?

LA COUR: Donc, vous le savez pas.

M. RANCOURT: Je sais pas.

LA COUR: O.k., alors ---

M. RANCOURT: Peut-être que je vais -- dans l'avenir, si je peux trouver un expert qui peut me répondre à la question ou si je connais quelqu'un qui travaille pour 'blogspot' qui peut venir en expert-témoin, peut-être qu'un jour je le saurai mais je ne le sais pas.

LA COUR: O.k. Donc, le fardeau est sur vous de le -- de le prouver.

M. RANCOURT: Oui. Oui, mais en ce moment je sais pas.

THE COURT: So he's got no evidence. He's got no evidence. He doesn't know if there's a station in Ontario.

M. RANCOURT: Et ---

MR. DEARDEN: It's in California.

THE COURT: Okay, but he doesn't know. Mettons
qui -- that's his answer so ...

M. RANCOURT: Donc, Monsieur Dearden va dire que
c'est en Californie, o.k., il a qu'à dire ça.
O.k., pour moi -- moi, je le sais pas.

LA COUR: O.k.

M. RANCOURT: Donc, ça c'était, um, ça:

« Okay, we will deal with this another day
... »

ça c'est pas une question, 115, donc, je n'ai pas
à répondre à ça. J'espère que vous acceptez
cette proposition, monsieur le juge.

LA COUR: Je peux pas dire que j'ai décidé
finalement mais je pense j'ai compris votre
point.

M. RANCOURT: O.k.

LA COUR: C'est pas nécessairement -- j'ai
l'intention de prendre ça en délibéré
aujourd'hui si ---

M. RANCOURT: Oui.

Alors, je suis rendu à 97?

LA COUR: Oui.

M. RANCOURT: Je me souviens pas si Monsieur
Dearden avait dit que j'avais répondu ou pas.

LA COUR: Cent quatorze (114)? Non. Je pense ça
c'est la même chose.

MR. DEARDEN: No, you didn't.

LA COUR: Non. Oui.

C'est la même question.

M. RANCOURT: O.k., donc, ça, j'ai répondu ---

LA COUR: Mais tu dois en avoir des documents quand vous l'avez signé.

M. RANCOURT: Pardon?

LA COUR: Vous devez avoir des ententes. Quand on signe et on établit un blogspot?

M. RANCOURT: Non. Non, y a rien.

LA COUR: Tu signes rien?

M. RANCOURT: Non, c'est un -- c'est un service gratuit. On n'a même pas besoin d'avoir ---

LA COUR: Signe -- d'habitude, on signe « I agree »

M. RANCOURT: Ah, tous -- les conditions?

LA COUR: Oui.

M. RANCOURT: On clique le « I agree » ---

LA COUR: Oui, oui.

M. RANCOURT: --- tous les conditions d'utilisation?

LA COUR: Oui.

M. RANCOURT: Oui. Y a ça.

LA COUR: Donc, est-ce que vous avez ---

M. RANCOURT: Et il est accessible à tout le monde. C'est un -- c'est public. Il a peut-être changé depuis le moment où, moi, j'ai cliqué parce qu'y change constamment.

Alors, je sais pas ce que j'ai cliqué à l'époque et je n'ai plus ça. Je n'ai pas gardé. Ça existe sur l'Internet à l'époque. C'est impossible de savoir ça.

Mais c'est pas ça que Monsieur Dearden demande, je pense, et j'ai ---

THE COURT: No, that's what he's asking for.

C'est ça qu'y demande. C'est exactement ça qu'y

demande.

M. RANCOURT: Qu'est-ce qu'il demande?

MR. DEARDEN: Who's that?

LA COUR: L'entente ou le -- mettons si c'est sur l'Internet, si vous êtes d'accord, vous avez accepté les conditions -- les termes et conditions d'un certain -- c'est quoi?

M. RANCOURT: Peut-être que Monsieur Dearden peut clarifier sa question, la Question 97?

Il dit:

"I'm asking you to produce -- to produce, sir, is what you signed up with to be able to create this UofOwatch blog using blogspot ..."

LA COUR: C'est ça.

M. RANCOURT: Moi, j'avais pas compris ce que vous dites.

LA COUR: Une copie.

M. RANCOURT: Est-ce que Monsieur Dearden peut nous dire qu'est-ce qu'y voulait dire?

MR. DEARDEN: You see the terms of his contract that he signed with Google to be able to use blogspot will have clauses such as: You're not going to defame anybody.

THE COURT: Right.

MR. DEARDEN: Okay?

It's also going to tell you, probably, where the company is. Certainly, you're going to know who the company is. His blogspot has "Google" right on the top of it, Your Honour.

THE COURT: So ---

MR. DEARDEN: I mean, he's told the Court that he doesn't know what company? It's Google. Like,

it's "Google blogspot" and he knows it.
So the terms of what he signed up to.

LA COUR: C'est ça qu'y demande c'est une copie
de l'entente.

M. RANCOURT: Je ne ---

LA COUR: Et vous l'avez cliqué.

M. RANCOURT: Et c'est -- maintenant que je
comprends la question. Moi, je pensais qu'il
voulait dire: Quel ordinateur avez-vous utilisé
pour ---

LA COUR: Non. Non.

M. RANCOURT: O.k.

LA COUR: Non.

M. RANCOURT: Cette entente-là, je ne l'ai pas et
je ne peux pas l'avoir parce que ce -- le blog a
été créé il y a plusieurs années et j'ai cliqué
une boîte qui disait que j'étais d'accord. On
n'a même pas besoin -- on n'est pas obligés même
de -- de lire l'entente ---

LA COUR: Non, mais je pense qu'il y a un
engagement de utiliser toutes vos efforts pour
ça, avoir à ce contrat, de cette date et puis
aussi le contrat présentement.

I imagine that's what the ---

M. RANCOURT: Mais Monsieur Dearden peut prendre
-- peut -- c'est accessible ---

LA COUR: Non, question de ---

M. RANCOURT: --- publiquement. C'est accessible
publiquement.

LA COUR: Oui.

M. RANCOURT: C'est pas plus ---

LA COUR: Mais c'est vous -- vous qui ---

M. RANCOURT: --- difficile pour moi de le faire. C'est pas plus facile pour moi de le faire que Monsieur Dearden et c'est pas raisonnable ---

LA COUR: Mais c'est votre contrat.

M. RANCOURT: --- d'ordonner quelqu'un à donner des documents qui sont accessibles publiquement. Ce n'est pas raisonnable, monsieur le juge, faire un ordre dans la Cour pour demander des documents qui existent publiquement. C'est -- ce n'est vraiment pas raisonnable.

C'est pas quèque chose qui est dans mon contrôle ou que j'ai accès et vous voulez m'ordonner que j'aille faire quelque chose, du travail pour Monsieur Dearden, son travail d'avocat, vous voulez m'ordonner que, moi, j'aille ---

LA COUR: O.k., la voix. La voix.

M. RANCOURT: Excusez-moi, mais c'est parce que c'est -- c'est les arguments qui m'emportent là. Mais vous voyez ce que je veux dire? Ça serait établir un précédent qui n'est pas juste de -- de me demander de faire le travail d'avocat de Monsieur Dearden.

LA COUR: Prochain point.

M. RANCOURT: Questions 108, 109, 111, 112.

LA COUR: C'est toutes les mêmes sortes de questions.

M. RANCOURT: Oui, c'est toute l'affaire de Google. J'ai aucune idée.

Ensuite, la Question 685. O.k., « Expert Witness ». Ça c'est toute l'affaire des Cédules B, Cédule A, et cetera; n'est-ce pas?

Alors, là, c'est important que je vous montre un

document.

LA COUR: Là, on passe les temps limites. On a peut-être un autre quoi? Dix (10) minutes?

M. RANCOURT: Bien, je vais faire ce que je peux mais ce que je veux vous montrer, monsieur le juge, c'est que Monsieur Dearden veut que je suive des règlements que lui-même ne suit pas et je vais vous montrer exactement ce que je veux dire parce que je vais vous montrer les cédules B que Monsieur Dearden et la Plaignante ont soumis.

Donc, voici la Cédule B -- A et B qu'ils ont soumis le 20 janvier 2012.

LA COUR: Non, mais là, je veux pas -- o.k.

M. RANCOURT: O.k.?

Et si vous allez -- ça c'est le ---

LA COUR: Oui, mais ça c'est des questions sur votre affidavit, votre -- de documents.

M. RANCOURT: Oui.

LA COUR: C'était votre Affidavit de documents.

M. RANCOURT: Oui, alors ---

LA COUR: Est-ce qu'on veut la regarder ---

M. RANCOURT: --- je suis en train de vous montrer qu'il -- qu'il m'impose des -- des conditions et des règlements que lui-même ne suit pas.

Alors, si vous regardez son Cédule B ---

LA COUR: Non, j'aimerais voir votre -- votre -- document -- Affidavit de documents.

C'est quoi vous objectez dans votre Affidavit de documents?

M. RANCOURT: Bien, c'est ça je suis en train de

vous expliquer ---

LA COUR: C'est trop compliqué d'aller à un autre document qui ---

M. RANCOURT: Non, non, c'est pas compliqué. Regardez, Cédule B ---

LA COUR: Ça c'est -- c'est on parle de vos affaires. On parle de vos affaires.

M. RANCOURT: Oui, mais regardez, Cédule B ---

LA COUR: Oui?

M. RANCOURT: --- y a rien. Il a mis aucun document. Aucun. Et il veut que, moi, je me tienne aux documents que j'ai mis mais, lui, il a mis aucun document.

LA COUR: O.k. Mais là ---

M. RANCOURT: Et ensuite, quand il l'a refait, il a mis un autre affidavit que je vous donne ici, un -- ce qu'il appelle un « Supplementary Affidavit » et si on -- si on regarde son nouveau 'Schedule B' ---

MR. DEARDEN: Sorry, what did you just tend?

M. RANCOURT: Ceci.

THE COURT: "Supplementary Affidavit of documents."

M. RANCOURT: Et si on regarde comment il l'a reconstruit, o.k., si on regarde son 'Schedule B' ---

MR. DEARDEN: Your Honour, this is ---

THE COURT: No, no, I'm not going to listen ---

MR. DEARDEN: --- Joanne St. Lewis' Affidavit of documents.

LA COUR: Vas-y à votre Affidavit de documents. Si vous avez un point dans votre Affidavit ---

M. RANCOURT: Mais mon Affidavit de -- o.k.,
alors, ce qui s'est passé c'est ---

LA COUR: Prends le vôtre puis fais ---

M. RANCOURT: --- ce qui s'est passé ---

LA COUR: --- un point.

M. RANCOURT: Ce qui s'est passé c'est la chose
suivante: J'ai communiqué avec des experts
potentiels et ça c'est -- ça doit être dans le
Cédule B mais, parce que je ne connais pas les
règles, j'ai mis dans Cédule A; mais avant que
Monsieur -- et pendant des mois Monsieur Dearden
a eu cet Affidavit de documents et il a rien
demandé.

Et, ensuite, je l'ai corrigé mon Affidavit. J'ai
dit: Voici un affidavit corrigé et là j'ai pris
les éléments qui devaient être dans Cédule A et
je les ai mis dans Cédule B et Monsieur Dearden
argumente que, vu qu'ils étaient dans Cédule A,
vous devriez les produire.

Et, moi, je dis: Non, ils sont dans Cédule B, ils
doivent être dans Cédule B et je donne plus de
détails qu'est-ce que vous donnez dans Cédule B
et c'est pas pour ça que vous avez le droit à
ces documents-là.

C'est ça mon point.

LA COUR: Mais là la question c'est de -- de
identifier votre témoin-expert; c'est ça?

M. RANCOURT: Oui, et j'ai ---

LA COUR: Vous refusez ---

M. RANCOURT: --- et j'ai déjà ---

LA COUR: Vous refusez ---

M. RANCOURT: --- identifié les témoins-experts à

Monsieur Dearden.

Je lui ai dit que il y a Cynthia McKinney et que c'est Adèle Mercier. J'ai nommé deux témoins-experts et j'ai dit que un troisième était monsieur Claude Lamontagne, que j'avais communiqué avec lui et que je m'engageais à ne pas utiliser Claude Lamontagne.

Et les règles sont très claires que si on s'engage à ne pas utiliser un témoin que on n'a pas besoin de donner aucune information à propos de ce témoin-là.

MR. DEARDEN: Sorry, who was the other expert besides Mr. Lamontagne?

M. RANCOURT: J'ai -- j'en ai donné deux, comme vous le savez -- vous avez le 'transcript' -- c'était Cynthia McKinney et Adèle Mercier.

Et donc, j'ai déjà complètement répondu à leurs questions et les -- les items qui sont dans Cédule B sont des items dans Cédule B qui sont authentiquement dans Cédule B et ils n'ont pas à les avoir.

LA COUR: Non.

M. RANCOURT: Parce que ils sont privilégiés.

LA COUR: Mais c'est quoi ---

M. RANCOURT: C'est 'Litigation Privilege'.

LA COUR: C'est quoi la question?

M. RANCOURT: Alors, la question ---

THE COURT: Was it to say why were they changed? Was that it? What was the question?

M. RANCOURT: Non, non, c'était pas ça. Il a -- il a pas demandé pourquoi, il a simplement affirmé: Vous avez mis des items de A à B.

Oui, j'ai mis des items de A à B, je ne le cache pas.

LA COUR: O.k., donc, le nom du témoin, vous l'avez indiqué? Selon vous, c'est ---

M. RANCOURT: Je -- c'est-à-dire je l'ai répondu dans les questions en -- en examination mais ---

LA COUR: Donc, vous l'avez -- vous l'avez répondu?

M. RANCOURT: Oui, j'ai répondu.

LA COUR: Donc, so it's answered.

M. RANCOURT: Oui, tout à fait.

THE COURT: Not answered?

MR. DEARDEN: No, it wasn't.

M. RANCOURT: Non? Pourquoi c'est pas répondu?

MR. DEARDEN: He refuses to provide the names of the expert witnesses or any other information. Now, I've just heard 'Claude Lamontagne' is one of them. I don't recall him identifying him one of the witnesses that he was not going to call and I wonder who the other one is because that's what I want to know is ---

M. RANCOURT: Pourquoi -- pourquoi un autre? Il y en n'a pas d'autre.

MR. DEARDEN: Well, you had it plural so I just assumed there was two.

M. RANCOURT: Non, il y en n'a pas d'autre.

Et il y a pas d'information à propos de d'autres témoins et, donc, il y a rien d'autre. J'ai complètement ---

MR. DEARDEN: It says: 'potential expert witnesses' in documents 18 and 23 and he refuses to tell me the names.

M. RANCOURT: De quoi il parle?

MR. DEARDEN: I'm on page 22, Your Honour, in the Refusals Chart.

THE COURT: Yeah. Yeah.

M. RANCOURT: Oui, parce que je les ai -- dans le -- dans la Cédule, je les nomme pas de noms. Je mets: « Témoin 1, Témoin 2 » et cetera.

Mais, monsieur le juge, qu'est-ce qu'y est important ici? J'aimerais -- j'aimerais revenir à un point important par rapport à tout ça.

LA COUR: Là, vous l'avez nommé vos -- votre expert.

M. RANCOURT: Oui.

J'ai répondu déjà mais ce qui est important, monsieur le juge ---

THE COURT: So now he's answered?

MR. DEARDEN: But not these ones.

LA COUR: Y sont différents?

MR. DEARDEN: Yeah.

M. RANCOURT: Laissez-moi expliquer.

Le Cédule B de Monsieur Dearden ne nomme que un seul témoin. Je lui ai demandé -- je lui ai demandé: Avez-vous d'autres témoins?

Et là, il m'a nommé quelqu'un d'autre et j'ai ici le quelqu'un d'autre.

LA COUR: Mais là, je parle de vos affaires. Vraiment, c'est de ça, c'est pas l'affaire de Monsieur Dearden.

M. RANCOURT: Pourquoi est-ce que Monsieur Dearden peut me poser des questions que lui-même ne répond pas. Il refuse de même mettre dans Cédule B les -- les communications qu'il a eues

avec d'autres témoins.

J'ai ici le 'transcript' ---

MR. DEARDEN: Again, that's irrelevant.

THE COURT: I'm not understanding.

Là, j'aimerais voir votre Affidavit de documents pour voir c'est -- what's the issue ---

M. RANCOURT: O.k. Je sais pas où il est rendu.

THE COURT: --- that you're raising.

It's -- y voulait savoir les noms des experts, des témoins-experts et vous avez -- là, vous avez identifiés mais, au tout début, vous l'avez refusé; c'est ça?

M. RANCOURT: Il -- Monsieur Dearden -- il y a plusieurs choses qui se passent mais on va commencer par trouver l'Affidavit. Je sais pas où il est en ce moment.

Est-ce que vous l'avez trouvé en quelque part?

Il doit être en quelque part. Ah! Je l'ai ---

LA COUR: Ça c'est des communications ---

MR. DEARDEN: Your Honour, if you look in the Compendium, Tab 19, I have his Affidavit of documents of September 21st.

THE COURT: Compendium, Tab 18?

MR. DEARDEN: Tab 19, Your Honour.

THE COURT: Okay. "Documents Rancourt, Schedule A".

M. RANCOURT: Ça c'est seulement quelques pages de Cédule A. Ça nous aide pas.

MR. DEARDEN: No, of course it is, because it has Documents 18, 23 and 26 which we're talking about.

LA COUR: Ah, o.k.

MR. DEARDEN: Which is « Expert Witness 2, Expert Witness 1 » in documents 18 and 23.

I've asked him: "Who are they?", he won't tell me.

LA COUR: C'est ça.

MR. DEARDEN: Now, I think I've just heard today that one of them is Claude Lamontagne.

LA COUR: Oui.

M. RANCOURT: De toute façon ---

LA COUR: Il engage de ne pas appeler ce monsieur-là.

M. RANCOURT: Tous les témoins qui sont ici qui n'étaient pas déjà nommés ---

LA COUR: Ce sont des ---

M. RANCOURT: --- qui ne sont pas déjà nommés, c'est-à-dire Cynthia McKinney et Adèle Mercier, sont déjà nommées par moi.

J'ai répondu à ça ---

LA COUR: Ce sont ---

M. RANCOURT: --- pendant l'examination ---

LA COUR: Et ça c'est 'expert' -- témoin ---

M. RANCOURT: Oui.

LA COUR: 'Witness 1 and Witness 2'?

M. RANCOURT: Exact.

LA COUR: Et vous n'avez pas ---

M. RANCOURT: Tous les autres qui sont ---

LA COUR: Ça c'est une erreur?

M. RANCOURT: --- qui sont nommés là ---

MR. DEARDEN: Non, non, non, non.

M. RANCOURT: Tous les autres -- tous les autres ---

LA COUR: Attends, attends, justement ---

M. RANCOURT: Est-ce que je peux finir ma phrase?

LA COUR: O.k.

MR. DEARDEN: No, but, Mr. Rancourt, please.

You never told me that expert number 1 that you list now or put in Schedule B is Cynthia McKinney and Mercier. You never said that.

M. RANCOURT: Non, je n'ai jamais dit ça. C'est vrai.

MR. DEARDEN: And my understanding is they aren't 'Expert 1 and Expert 2'.

M. RANCOURT: Tout ce que je vous dis c'est que j'ai nommé ---

LA COUR: Est-ce qu'ils sont -- c'est la question que j'ai posée: Est-ce que ça ces deux personnes-là ce sont « Expert 1 » et « Expert 2 »?

M. RANCOURT: Je ne sais pas parce que je ne me souviens pas. Je m'excuse mais ---

LA COUR: Mais il y a pas de « Expert 3 » puis de 4 ou 5?

M. RANCOURT: Non, je pense qu'il y en a trois maximum.

Mais je m'engage -- tous les -- tous les ---

LA COUR: Le dire ils sont qui. Il faut -- il faut mettre leurs noms.

M. RANCOURT: O.k.

Alors, voici la réponse très simple: Je m'engage -- tous les experts qui sont listés '1, 2, 3', je sais pas combien, je m'engage à ne pas les utiliser excepté Cynthia McKinney et Adèle Mercier.

LA COUR: O.k.

M. RANCOURT: Donc, les règles disent si je m'engage à ne pas les utiliser, j'ai pas besoin de donner d'information à propos d'eux.

LA COUR: O.k.

M. RANCOURT: Les règles sont très claires là-dessus.

THE COURT: I'm not sure it's privilege, I think you have to identify them and then claim privilege on them is what I understood. Isn't that right?

MR. DEARDEN: He's got to identify their names.

THE COURT: Yes, you identify them.

MR. DEARDEN: Because I get to contact them ---

THE COURT: Right.

M. RANCOURT: --- if I want to.

THE COURT: Yes.

MR. DEARDEN: Because he probably got told: You know, calling someone a "House Negro", not a good thing.

That's why he doesn't want me to know their names.

LA COUR: Donc, il faut les identifier. Il faut les identifier. Si vous l'avez fait, c'est bien. C'est ça que j'essaye de comprendre: Est-ce que c'est fait ou non?

Là, c'est fait en partie.

M. RANCOURT: J'ai -- j'ai écrit ces affidavits il y a longtemps, je -- je sais pas.

THE COURT: Okay, well ---

M. RANCOURT: Il faudrait que je regarde ça.

THE COURT: --- peut-être une nouvelle Cédule B ---

M. RANCOURT: Pardon?

LA COUR: --- avec les noms.

O.k., prochaine.

M. RANCOURT: Où est-ce qu'on est rendus là?

MR. DEARDEN: Documents 1, 2, 3, page 23.

M. RANCOURT: On est rendus à la Question? Où est-ce qu'on est? Est-ce qu'on a fait la Question 685, « Your Expert Witness »?

MR. DEARDEN: Yes, we did.

THE COURT: Yes, so we're on 23.

M. RANCOURT: Six cent quatre-vingt-neuf (689)?

LA COUR: Alors, 23.

M. RANCOURT: Pardon?

LA COUR: On est à page 23, c'est ça?

« Documents 1, 2, 3 »?

M. RANCOURT: Ah, o.k.

LA COUR: Six cent quatre-vingt-neuf (689)?

M. RANCOURT: O.k., o.k., là, je le vois.

Donc, ça c'est le document dont on vient de parler; n'est-ce pas?

MR. DEARDEN: No.

LA COUR: Non, on parlait de ton Affidavit de documents là. On parlait déjà ---

M. RANCOURT:

« ... in Schedule B, Documents 1, 2, 3 in
Schedule B are dated. »

MR. DEARDEN: Yeah, these are not experts, this is now lawyers.

M. RANCOURT: Oh, o.k.

Attendez, j'ai besoin de savoir de quoi on parle là.

Est-ce que c'est Cédule B?

MR. DEARDEN: And she had ---

LA COUR: Mais vous l'avez listé: « Lawyer 1, Lawyer 2, Lawyer », j'ai vu dans cette affaire. Donc, y veut savoir les noms, j'imagine.

M. RANCOURT: Y veut savoir les noms des avocats?

LA COUR: C'est ça.

M. RANCOURT: C'est quoi la -- c'est quoi le ---

MR. DEARDEN: Your Honour, you'll find in Tab 20, Schedule B that has « Documents 1, 2, and 3 ».

THE COURT: Right.

MR. DEARDEN: And the question is just -- actually, this is a crucial question that you have set out on page 23 about: What are the facts that led him to seek legal advice on February 12th, 2011?

The day after he wrote the "House Negro" blog, he's going to see a lawyer.

Joanne St. Lewis did not sue him until May or -- yeah, May -- when did the Notice go -- May of 2011 so, without even hearing from Joanne St. Lewis, he's seeking legal advice and we're looking for the facts that led him to have to go see a lawyer about her blog.

M. RANCOURT: C'est du truchage, monsieur le juge. Une discussion avec un avocat c'est -- c'est 'solicitor/client privilege', un point c'est tout.

Il n'a pas à décortiquer qu'est-ce que -- de quoi on a parlé, de quels faits on a parlé, et cetera.

Si on a parlé de certains faits, on a pas parlé de d'autres faits; donc, c'est aller chercher de

quoi on a parlé.

Est-ce que ça du sens, monsieur le juge?

LA COUR: Um, je sais pas là. Ça c'est une question de -- on est -- c'est quelle -- where is that question?

MR. DEARDEN: Your Honour, page 23, right at the bottom.

LA COUR: Right.

MR. DEARDEN: I say:

"The Defendant refused to answer: 'What are the facts that give rise to you needing to contact a lawyer about what you published about the Plaintiff on UofOWatch?'"

It deals with facts, not legal advice.

LA COUR: C'est ça.

MR. DEARDEN: It's not privileged.

M. RANCOURT: Ça -- ça c'est un truc, monsieur le juge, parce que si vous -- si vous dites: J'ai eu une communication avec un avocat, oui, mais de quels faits vous avez parlé? Alors, ---

LA COUR: Non, non, c'est pas lesquels faits vous avez parlé, quels faits que c'est arrivé pour vous avez convaincre d'aller contacter un avocat.

Il y a une menace d'action. Est-ce que ---

M. RANCOURT: Non, y avait pas de menace d'action ---

LA COUR: --- vous aviez ---

M. RANCOURT: --- avait rien.

LA COUR: Est-ce que tes amis vous a conseillé de le faire? Est-ce que ...

D'après vous, vous avez pris ça de votre propre

esprit que c'était dangereux ou que ...

Donc, c'est pourquoi? Il y a une annonce sur la télévision qui dit: Si on fait des affaires?

Je sais pas. C'est cette sorte de ---

M. RANCOURT: Mais c'est aller trop loin.

LA COUR: Moi, je le sais pas. Moi, je le sais ---

M. RANCOURT: C'est aller trop loin. Ça pas d'allure.

LA COUR: O.k., selon vous -- selon vous, c'est 'too far'?

M. RANCOURT: Oui, bien sûr.

LA COUR: Trop loin?

M. RANCOURT: 'Fishing expedition'.

C'est -- c'est le -- c'est 'solicitor/client privilege' et 'fishing expedition. Ça -- ça pas de sens d'aller là. C'est ...

Imaginez si, moi, je pouvais aller si loin avec mes questions, dans l'autre direction.

LA COUR: À savoir que tu savais c'était diffamatoire? C'est ça qu'y vont dire pour établir le 'malice'?

C'est ça qui s'en vient. C'est ça la -- pourquoi vous l'avez fait, si vous -- vous êtes au courant de la danger puis vous l'avez rien fait.

M. RANCOURT: J'ai -- j'ai même ---

LA COUR: J'imagine c'est ça qu'y vont -- qui va sortir.

M. RANCOURT: J'ai même demandé: « Pourquoi vous dites que c'est raciste? » et ils refusent de me répondre.

LA COUR: O.k., prochaine ---

M. RANCOURT: C'est très simple.

LA COUR: Prochaine question.

M. RANCOURT: Six cent quatre-vingt-neuf (689),
six cent quatre-vingt-dix (690).

« So the first one you should be looking at
... »

THE COURT:

"... is malice about not taking down the
blogs."

C'est ça qui -- c'est ça leur point.

M. RANCOURT: Ça c'est la raison. C'est la --
mais ---

LA COUR: Ils vont alléguer.

« Failure to apologize » et ça c'est répondu,
là, page 26.

M. RANCOURT: Six cent -- six cent quatre-vingt-
neuf (689), est-ce qu'on -- est-ce qu'on l'a
réglé ça?

LA COUR: Bon, c'est ce qu'est la question?
C'est encore ---

MR. DEARDEN: Your Honour, page 26.

LA COUR: --- quels faits qui vous -- se sont
passés ---

M. RANCOURT: Où est-ce qu'on est, monsieur le
juge?

LA COUR: Je crois qu'on est ---

MR. DEARDEN: Page 26.

LA COUR: --- à la question -- page 26.

M. RANCOURT: De mon document?

LA COUR: Non, bien, du Charte de refus.

M. RANCOURT: Bien, c'est-à-dire le document avec
mes réponses dedans?

LA COUR: Oui.

M. RANCOURT: O.k.

LA COUR: Bon, la réponse, page 26:

"L - Communications received by the Defendant about Professor St. Lewis and the articles in issue in this action".

M. RANCOURT: Ils parlent de -- de malice et, si je reviens à la page 24, je signale que la règle 25.06.8 dit que quand on prétend 'malice', on doit donner 'full particulars'.

Ça n'a pas été fait.

LA COUR: Non, c'est -- c'est lui qui demande votre liste de gens, combien de personnes qui sont sur votre liste, votre 'blog'; c'est ça.

M. RANCOURT: Ça, c'est quelle question, là?

LA COUR: La Question 134.

M. RANCOURT: Oh, on est loin là.

LA COUR: Page 26 ---

M. RANCOURT: O.k., 134.

THE COURT:

« ... because you provide an e-mail address to your UofOWatch site for people to send e-mails, produce all the e-mails that were sent to you about any blog that you've written about Professor St. Lewis."

That's the request.

M. RANCOURT: J'ai déjà complètement répondu à cette question et je cite le 'transcript' de -- le procès-verbal de la séance, à la page 47 à 48, où je dis:

« ... et ma réponse est que ça faisait partie normale de ce processus et j'ai déjà fourni

tout ce type de courriels parce que c'était pertinent à la cause. Alors, du meilleur de mon habilité, j'ai fait la recherche requise et j'ai produit ces courriels-là déjà. »

J'ai dit que j'ai déjà produit ces courriels, tous ces courriels.

Et j'ai donné cette réponse-là que j'avais déjà produit les courriels, monsieur le juge.

LA COUR: Ça, c'est à quel endroit? C'est 1 (d), c'est ça?

M. RANCOURT: C'est dans le 'transcript' de la séance et, donc, ça va être dans -- il faut chercher le 'transcript' de la séance. Ça va être -- Monsieur Dearden a mis le 'transcript' entier en évidence mais je l'ai pas ici devant moi.

LA COUR: Donc, selon vous, vous l'avez répondu?

M. RANCOURT: Oui, j'ai dit que la ---

LA COUR: Tous les courriels?

M. RANCOURT: J'avais déjà tout donné et j'ai dit ça pendant l'examination.

LA COUR: Quelle question, là? C'était à quelle page?

M. RANCOURT: On est à la Question 134, à la page 47 du 'transcript'.

(COURTE PAUSE)

M. RANCOURT: Ah, j'ai une copie ici.

LA COUR: Donc, je l'ai devant moi ici.

M. RANCOURT: Vous l'avez? Quarante-sept (47)?

THE COURT:

« ... e-mail address for your 'Watch' site for the people who send e-mails ... »

M. RANCOURT: Voilà.

Donc, vous voyez ça commence à la ligne 21 à la page 47.

LA COUR: Donc, selon vous, vous l'avez fourni ces -- toutes ces listes de gens qui ont écrit des courriels?

M. RANCOURT: Il a demandé tous les courriels qui avaient été échangés et j'ai dit: J'ai déjà fait une recherche complète, j'ai déjà donné tout ce que je pouvais.

Et j'ai donné même -- j'ai donné plein de choses incluant tout ce qui peut être pertinent incluant « the most bestest Christmas present », et cetera, et cetera.

J'ai tout donné ce que je pouvais. Y a rien d'autre. Donc, j'ai répondu: Y en n'a pas.

THE COURT: So is that answered? There aren't any.

MR. DEARDEN: I hear what he's saying, Your Honour, and it just defies logic that, with all of his Facebook messages, his Tweets, his four different blogs that he isn't getting comments, getting some kind of communication -- from Mr. Hickey, for instance -- which is not produced. I just find that a rather interesting answer that he's just given the Court.

But we know, Your Honour, that he's received comments because there -- some of them are reproduced in -- in -- like the 'House Negro' article of February 11th, well, that comes to him.

He didn't produce those comments to me. You

didn't produce them.

M. RANCOURT: Non. Non, c'est pas -- c'est faux ce que Monsieur Dearden dit.

Les -- les commentaires ---

MR. DEARDEN: No, as stand-alone received comments.

M. RANCOURT: Les commentaires sont postés sur le blog. C'est pas des messages que je reçois.

LA COUR: O.k.

M. RANCOURT: Ils sont sur le 'blog' ---

LA COUR: O.k.

M. RANCOURT: --- pour tout le monde de les voir.

MR. DEARDEN: No, you ---

LA COUR: C'est ça -- c'est ça la question qu'il a demandé: toutes les 'posts' qui ont été reçus ou ---

M. RANCOURT: Oui.

LA COUR: --- ou postés sur votre 'blog' ---

M. RANCOURT: Oui.

LA COUR: --- à propos de la Professeure St. Lewis ou votre article ---

M. RANCOURT: Oui.

LA COUR: --- une copie de tout.

M. RANCOURT: Y sont -- y sont déjà sur le 'blog'. Ils sont accessibles publiquement. C'est pas des documents que je contrôle ou que j'ai reçus.

La question est: Donnez-moi toutes les courriels que vous avez reçus. C'est ça la question.

Et j'ai dit: J'ai -- j'ai cherché tous mes courriels et je vous ai tout donné, y a rien d'autre.

LA COUR: Alors, est-ce que je comprends est-ce qu'il y a une distinction entre « courriel » puis « posts to a blog »? Is that ---

M. RANCOURT: Bien sûr.

LA COUR: Ah!

M. RANCOURT: Bien sûr.

LA COUR: O.k.

M. RANCOURT: Il y a une grosse distinction et la Cour Suprême ---

LA COUR: Il y a pas ---

M. RANCOURT: --- reconnaît ça.

LA COUR: Il y a pas de courriels mais il existe des commentaires pour ces ---

M. RANCOURT: Oui, et Monsieur Dearden peut aller aujourd'hui, demain, hier, aller voir tous ces commentaires qu'il veut. Il y a rien de secret. Il peut aller les voir.

Il les imprime à chaque fois. Il nous a donné un -- un 'Compendium of Argument' avec 31 onglets et il y a plein de ces commentaires-là qu'il a imprimés pour nous les montrer.

THE COURT: So I'm trying to be clear, you're saying there's no e-mails but there's blog postings?

Or what are you asking for?

MR. DEARDEN: No, I don't believe that there's no e-mails, Your Honour, but I certainly -- he moderates the comments that come through. He screens them.

THE COURT: Right.

MR. DEARDEN: Okay?

I want to see the comments as they came to him to

see if he edited them or did he keep some back?
He -- he can decide -- he can control what gets
posted as a comment.

Did he put all the comments? That's what I want
to ask him about.

M. RANCOURT: Mais -- o.k., mais c'est ---

MR. DEARDEN: I want to see the actual comment,
though, not ---

M. RANCOURT: C'est pas des courriels.

MR. DEARDEN: --- not what ---

M. RANCOURT: C'est pas des courriels.

LA COUR: Non. Non.

M. RANCOURT: C'est pas des courriels.

Ça va sur un site.

LA COUR: Oui.

M. RANCOURT: Je vais sur ce site, je les regarde

LA COUR: Oui.

M. RANCOURT: --- et je fais ---

LA COUR: Click, click.

M. RANCOURT: --- click, click.

LA COUR: Oui ou non. Oui.

M. RANCOURT: « Post », « Delete », whatever.

LA COUR: Oui.

M. RANCOURT: O.k.? C'est tout.

LA COUR: Oui.

Mais c'est ça ---

M. RANCOURT: Et quand je fais « Delete », ils
disparaissent.

LA COUR: Oui, ils sont plus là.

M. RANCOURT: Ils sont plus là.

LA COUR: So -- mais c'est ça qui -- I don't know

if it's been answered.

Est-ce que ces 'posts' sont -- ceux que vous avez radiés ne sont plus là?

M. RANCOURT: Ils n'existent pas. Ils sont dans le « deleted land » de Google -- je sais pas -- et peut-être que Monsieur Dearden peut demander à Google de les trouver?

Je sais pas ce qu'il va faire avec ça mais, moi, je les ai pas.

THE COURT: Okay, so there's an answer.

MR. DEARDEN: Well, it's an answer today, Your Honour, so ...

THE COURT: Okay.

MR. DEARDEN: We're getting it today.

THE COURT: Okay.

M. RANCOURT: Mais la question était pas claire. La question demandait des courriels, ce ne sont pas des courriels.

Donc, je pense que j'avais répondu que il y a pas plus de courriels.

LA COUR: Oui.

M. RANCOURT: O.k.?

Donc, maintenant, ensuite, la Question 883.

Ça c'est exactement la question des 'hyperlinks'.

LA COUR: Même chose.

M. RANCOURT: Même chose, 'hyperlinks'.

LA COUR: 'Hyperlinks' c'est pas dans ---

M. RANCOURT: Même chose, 'hyperlinks' pour 919.

La Question 921 n'est pas une question. J'espère que vous êtes d'accord, monsieur le juge, c'est pas une question ça?

THE COURT: ... is not really a question, 922?

Neuf vingt-deux (922); c'est ça?

M. RANCOURT: Neuf cent vingt-deux (922):

« Okay, this is an e-mail, Mr. Rancourt, that you sent to all these media organizations and reporters ...»

et j'ai déjà répondu. J'ai répondu: « Oui, c'est un courriel que j'ai envoyé. » Donc, il y a déjà une réponse. On est d'accord?

THE COURT: Has that been answered, Mr. Dearden?

Is that -- we're sort of one by one here -- but:

“Oui, ce courriel, I sent it out on July 22nd.”

MR. DEARDEN: But I'm ---

M. RANCOURT: Qu'est-ce qu'il veut de plus?

MR. DEARDEN: This is one where I'm asking him to print out, Your Honour.

M. RANCOURT: Non, mais ---

MR. DEARDEN: And this is where he refuses to print out ---

M. RANCOURT: --- faisons une question à la fois. Neuf cent vingt-deux (922) ---

MR. DEARDEN: We're talking 'Issue 3'.

M. RANCOURT: --- a été répondu; n'est-ce pas?

THE COURT: Um, he said -- because -- mais -- it appears there is a copy of this e-mail of July 22nd sent à 4:06 p.m. Somebody has a copy of that:

“Is this the one you sent?
Yes.”

MR. DEARDEN: Some of these questions, Your Honour, are just there for context.

LA COUR: Right.

M. RANCOURT: Bon, bien ---

MR. DEARDEN: What we were looking for was for him to print out exactly what he sent to all these people.

M. RANCOURT: O.k., donc, ---

THE COURT: Okay, 924 is really the question then; is that it?

M. RANCOURT: Um, 923:

“And your heading is?”

et j’ai dit: “Oui.”

Donc, ça, c’est répondu.

THE COURT: So the answer is « Yes ».

M. RANCOURT: Donc, -- oui, et 924:

« And, again, I’m going to ask you to print out the link that you sent ... »

Exactement l’affaire de ‘hyperlink’. C’est complètement un aberration, c’est question-là. J’ai donné le code du ‘URL’ à Monsieur Dearden précisément. C’est une adresse précise. Il y a rien d’autre qui -- qui peut être donné plus que ça.

Donc, ça, c’est déjà répondu. Ensuite, 932 c’est quoi? Encore une affaire de ‘link’ ---

MR. DEARDEN: What did you ---

LA COUR: C’est la même chose, ‘hyperlink’.

MR. DEARDEN: What did you send?

M. RANCOURT: Encore une affaire de ‘link’, donc, j’ai répondu précisément à Monsieur Dearden et je donne la réponse, je donne le lien précis avec le code de l’adresse dans ma réponse ---

MR. DEARDEN: No, Your Honour ---

M. RANCOURT: --- à l’onglet 1(b), page 12.

MR. DEARDEN: --- the question was:

"What have you attached? What information in that link?"

And then I asked:

"And print it out for me."

What have you sent? So if you look at Tab 22 of -- of the Compendium, you see that he's got a link there to The Citizen and motion and motion reply, expert says "No racism" and Law Times is covering the story.

So I'm asking him not just to print out what all these links that these questions cover so that I know exactly what he's talking about but to tell me.

THE COURT: What link are we looking at here just so I'm ---

MR. DEARDEN: Well, that's ---

THE COURT: This is at Tab?

MR. DEARDEN: --- the question, Your Honour, a good -- that's exactly ---

THE COURT: Twenty-two (22)?

MR. DEARDEN: Yeah, in Tab -- we're looking at Tab 22 right now.

THE COURT: Right.

MR. DEARDEN: What did you send Nico Cochrane (ph) of The Ottawa Citizen that's in this link?

M. RANCOURT: Mais il y a -- il y a un seul lien, monsieur le juge, qui est là devant vous. Vous le voyez ce lien? Et ---

THE COURT: Well, I -- is that it? That is the ---

M. RANCOURT: "http" et cetera.

LA COUR: Oui.

M. RANCOURT: Ça c'est le lien dont parle Monsieur Dearden.

LA COUR: O.k.

M. RANCOURT: Et comme je lui ai expliqué à maintes fois, ça c'est l'adresse précise qui mène au contenu sur lequel je n'ai aucun contrôle, un point c'est tout.

MR. DEARDEN: No, but he's just repeating, Your Honour.

What -- the other question besides:

"I want you to print out every link that you've communicated to hundreds of people about this action ..."

is:

"What did you send them?"

That's what I want him to tell me:

"What did you send them?"

M. RANCOURT: Je comprends pas sa question. Qu'est-ce qu'il raconte?

MR. DEARDEN: What is it that you sent Nico Cochrane?

M. RANCOURT: Mais le courriel est là?

THE COURT: I think this -- I think this is all -
- I think this is all he sent as I have understood ---

M. RANCOURT: C'est noir sur blanc. Il y a pas d'attachements, y a rien d'autre.

THE COURT: As I -- as I've -- si j'ai bien compris, vous l'avez envoyé -- ça c'est le courriel.

M. RANCOURT: Oui.

LA COUR: Madame Rockburn clique dessus puis elle -- elle peut savoir ---

M. RANCOURT: Oui.

LA COUR: --- que c'est qu'il en est?

M. RANCOURT: Oui.

Et Monsieur Dearden ---

LA COUR: So I think ---

M. RANCOURT: --- peut taper l'adresse puis aller voir lui aussi qu'est-ce qu'y en est; o.k.? Et n'importe qui peut le faire et c'est une question complètement -- je ne comprends pas Monsieur Dearden avec son insistance, je trouve ça, um, incroyable.

MR. DEARDEN: It's not 'incroyable'.

I need to know what he sent and he has to tell me that answer.

THE COURT: But I think he's saying ---

MR. DEARDEN: Not just send me off to go click on my own link -- like create my own address because it may not be the one that he has in that e-mail.

You see, Your Honour, he has this e-mail at Tab 22.

THE COURT: Yes.

MR. DEARDEN: He has this. So he can just click on it. Right now, he can click and he's already told you that he's verified that the address is accurate yet he's so stubborn he won't actually print out.

What more accurate could be than what Mr. Rancourt, in his own hyperlink, in his own e-mail, can print out for me?

But, secondly, apart from asking him to print out, I asked him to tell me: What did you send? What's in that link?

And he has to tell me that.

THE COURT: But I think what he's saying is there ---

M. RANCOURT: Incroyable.

THE COURT: --- he's saying there's nothing else that he sent. He just sent the link.

MR. DEARDEN: No, but -- no, the link has information in it, Your Honour.

THE COURT: Yeah, when you click ---

MR. DEARDEN: Was it the Motion?
Like, it says:

"St. Lewis files motion to force mandatory mediation is my guess."

He knows what -- he knows what he sent Nico. He knows it but I don't.

THE COURT: So he had something that he sent on this link or put on the link ---

M. RANCOURT: C'est ridicule.

MR. DEARDEN: That -- yeah, that he sent documents, Your Honour.

M. RANCOURT: Ridicule. Ridicule, monsieur le juge.

MR. DEARDEN: Those are the attachments that I'm saying ---

M. RANCOURT: On est dans un -- dans un espace ---

MR. DEARDEN: Excuse me.
No different than a letter that refers to another document that's enclosed and, of course, you'd

be entitled to the enclosure.

That's what this is, this -- this link is the equivalent to an enclosure to a letter and he actually knows what he sent Nico Cockburn (ph) and won't tell me and I asked him.

So it's beyond just print out for me what the hyperlink that you have in your own e-mail, Mr. Rancourt, but tell me what your recollection is that you sent to The Citizen reporter.

M. RANCOURT: C'est pathétique, monsieur le juge. On a lu la décision de la Cour Suprême qui explique la nature d'un 'hyperlink'; le fait que je ne contrôle pas le -- ce qu'y se passe.

Monsieur Dearden ---

LA COUR: Mais je pense j'ai compris vos deux positions.

M. RANCOURT: Mais ---

LA COUR: O.k., prochaine -- prochaine question.

M. RANCOURT: O.k.

Je -- je tiens à dire que j'ai dit sous serment à Monsieur Dearden que cette adresse web était précise et c'est la bonne.

Il y a une adresse unique et c'est la bonne et je lui ai déjà donnée.

LA COUR: Donc, ça c'est la même question; 947 et 49, c'est la même question?

MR. DEARDEN: Your Honour, Professor St. Lewis is just educating me that this link that you see at Tab 22 as an example is Rancourt-created link. He created that.

THE COURT: Correct.

MR. DEARDEN: He controls that; okay?

THE COURT: But it's -- it's linked to his own site.

M. RANCOURT: Oui.

MR. DEARDEN: Yeah.

THE COURT: That's his site.

M. RANCOURT: Bien sûr.

MR. DEARDEN: So tell me what it is.

It's so simple.

LA COUR: C'est votre site.

M. RANCOURT: Bien sûr.

LA COUR: C'est vous. Ça s'en va chez vous.

M. RANCOURT: Et -- donc, c'est pas moi qui a créé l'adresse, l'adresse s'est créée automatiquement.

LA COUR: Non, non, je comprends mais c'est ---

M. RANCOURT: Le site est mon site ---

LA COUR: Oui.

M. RANCOURT: --- et je contrôle le contenu mais je ne peux pas vous dire le contenu en cette date-là parce que ça pu changer et, si ça changé, ça disparu les changements.

LA COUR: Oui.

M. RANCOURT: Ça c'est la nature ---

LA COUR: Oui, mais -- mais c'est vous qui -- qui a cette connaissance parce que c'est vous le site.

MR. DEARDEN: Yeah.

M. RANCOURT: O.k., alors, ---

MR. DEARDEN: Exactly.

M. RANCOURT: --- je peux dire à Monsieur Dearden que ce site-là n'a pas changé. S'il va aujourd'hui puis il le regarde, ça va être le

même que celui que j'ai envoyé. Un point c'est tout.

Et Monsieur Dearden sait très bien que je change très rarement mes sites; uniquement pour corriger des erreurs factuelles quand je les apprends. Je change -- j'ai pas l'habitude de changer mes liens.

Donc, Monsieur Dearden a un accès public à ce lien-là et c'est pas un attachement, c'est une adresse.

LA COUR: O.k., prochain item.

M. RANCOURT: On est rendus où là?

LA COUR: Je pense 949. Je pense c'est toutes les -- c'est pas mal toutes la même question.

MR. DEARDEN: And on Facebook.

M. RANCOURT: O.k., on arrive à Facebook? Facebook.

MR. DEARDEN: Page 32, answered.

M. RANCOURT: O.k.

MR. DEARDEN: Page 33 ---

M. RANCOURT: Um, 766, répondu; 780, répondu; 794, il dit que c'est pas répondu:

« I want you to provide me ... »

O.k., ça c'est vraiment très surprenant cette question-là.

Monsieur Dearden veut que je donne mon livre d'adresses de tous mes contacts dans Facebook et c'est beaucoup trop intrusif.

Et j'ai déjà dit à Monsieur Dearden que je n'ai pas reçu de message de ces personnes-là et que je n'ai pas envoyé de messages à ces personnes-là. Ce sont -- c'est ma liste de contacts sur

Facebook. C'est comme un livre d'adresses. Si vous laissez Monsieur Dearden avoir gagné ce point, vous allez établir un précédent très dangereux où on va avoir accès au livre d'adresses des -- des personnes qui se défendent pour voir si, peut-être, qui ils peuvent connaître, qui sont leurs contacts, qui sont leur famille, qui sont leurs amis. De façon générale, c'est beaucoup trop intrusif. C'est -- je suis choqué que Monsieur Dearden ose demander une telle chose.

Je lui ai déjà dit que je -- je n'ai pas envoyé de messages, que tous les messages électroniques que j'ai envoyés je lui ai donnés, je lui ai fournis; il y en n'a pas d'autres.

Je suis pas une personne qui envoie des courriels par Facebook. C'est pas dans mes habitudes. Y en n'a pas. Je m'excuse. C'est ça la -- c'est ça la -- la vérité, un point c'est tout.

LA COUR: Est-ce que vous l'avez répondu à cet effet?

M. RANCOURT: J'ai ---

MR. DEARDEN: Your Honour?

M. RANCOURT: J'ai dit -- oui, j'ai répondu ---

MR. DEARDEN: This Defendant has just told the Court that he didn't send or receive Facebook messages to anybody.

If you look at Tab 23, Denis Rancourt is inviting his Facebook friends to attend the motion of October 6th:

"Go to the Civil Proceedings counter to find out room number in this crazy case of the

defamation lawsuit against me. Some details about the motion are here ..."

and he has a link:

"See justice self-defended but not giving up against the big machine."

He's just totally made a false representation ---

M. RANCOURT: Non.

MR. DEARDEN: --- to the Court.

M. RANCOURT: Pas du tout.

MR. DEARDEN: This is a Facebook ---

M. RANCOURT: Pas du tout.

MR. DEARDEN: --- communication ---

M. RANCOURT: Non!

MR. DEARDEN: --- at Tab twenty ---

M. RANCOURT: Non, ça ---

MR. DEARDEN: Oh, are you being cute again on -- on ---

M. RANCOURT: Assoyez-vous, Monsieur Dearden ---

MR. DEARDEN: --- the difference between an e-mail and ---

M. RANCOURT: Assoyez-vous, Monsieur Dearden.

MR. DEARDEN: --- a blog?

M. RANCOURT: Ça c'est un 'posting' public sur ce qu'on appelle un 'bulletin board'.

C'est pour ça que Monsieur Dearden peut l'imprimer parce que c'est public. C'est pas moi qui lui a donné ça, il est allé le chercher puis il l'a imprimé lui-même.

Ça c'est un 'posting' public. Ce n'est pas un message d'une personne à une autre, c'est un espace public ---

LA COUR: Bon, est-ce qu'il -- est-ce qu'il

demande vraiment toutes les 'postings' que vous avez faits concernant ces -- ce blog?

M. RANCOURT: Je sais pas ce qu'il demande.

THE COURT: Is that what you're seeking? Any postings or e-mails, Facebook messages?

You've answered: No Facebook -- pas de messages ---

M. RANCOURT: Pas de messages.

LA COUR: --- courriels.

M. RANCOURT: Pas de messages.

LA COUR: Mais il y a eu des 'blogs' -- des 'postings'?

M. RANCOURT: Il y a un 'bulletin board' ---

LA COUR: 'Bulletin Board'.

M. RANCOURT: --- qui est assez public pour que Monsieur Dearden aille imprimer tout ce qu'ils veulent. Il -- il vous l'a montré ici.

Et d'ailleurs, en imprimant ceci, Monsieur Dearden est en train de briser les règles d'utilisation de Facebook parce que Facebook n'est pas sensé d'être utilisé pour des fins de litigation, et cetera.

LA COUR: O.k., mais si la ---

M. RANCOURT: Mais ça c'est un détail.

LA COUR: Si la question de toutes vos 'postings' et puis est-ce que tu -- quelqu'un peut aussi mettre un message sur le 'posting'?

M. RANCOURT: Oui.

LA COUR: Donc, c'est ça qu'y demande.

M. RANCOURT: C'est des espaces ---

LA COUR: Toute le ---

M. RANCOURT: C'est des espaces publiques.

LA COUR: O.k., mais c'est ça qu'y demande, une copie de tout ce que vous avez mis ---

M. RANCOURT: Mais il l'a, regardez, il l'a ici.

LA COUR: Tout ce que, vous, vous avez mis puis tout ce que les -- vos, mettons, supporteurs y ont dit: « Oui, oui, go get them. », je sais pas ou -- « Défendez-vous ».

Je sais pas que c'est qu'est cela mais là c'est ça qu'y demande.

Is that what I've understood? You want any postings or messages left on the bulletin board?

MR. DEARDEN: And any of his private Facebook messaging with his friends ---

THE COURT: Well ---

MR. DEARDEN: --- because it's not just the public, there's private messages ---

M. RANCOURT: Non, j'ai -- j'ai déjà répondu qu'y en avait pas, monsieur le juge, y avait ---

MR. DEARDEN: You see, there's 407+ friends. And the same with Twitter, Your Honour, because he sent Tweets out to -- to people.

M. RANCOURT: Oh, là là là là là.

MR. DEARDEN: Not a 'là là là là là', look at your Tab 27 ---

M. RANCOURT: J'ai -- j'ai déjà répondu ---

MR. DEARDEN: --- of the Compendium.

M. RANCOURT: --- que tous les communications électroniques ont été fournies. De façon non-ambigüe, sous serment, j'ai déjà expliqué ça. Donc, c'est déjà répondu. Il a tout.

LA COUR: O.k.

I don't know if you've answered that in the -- in

a -- in an answer ---

M. RANCOURT: Oui.

LA COUR: --- dans une réponse dans les transcriptions.

M. RANCOURT: Oui.

LA COUR: --- mais c'est les 'blogs' -- les 'bulletin board messages', les messages, puis selon vous ---

M. RANCOURT: C'est pas des messages.

LA COUR: T'as pas de Twitter pis t'as pas de Facebook messaging que ---

M. RANCOURT: J'ai -- je suis ---

LA COUR: --- concernant ---

M. RANCOURT: Je suis enregistré sur Twitter et je suis enregistré sur Facebook et les deux sont des services de 'bulletin board' qui sont publics.

Monsieur Dearden peut aller regarder Twitter quand il veut. Il peut aller voir tous les messages qui ont été envoyés sur Twitter. C'est libre à lui de faire ça.

Je n'ai pas à faire son travail d'avocat pour lui. C'est pas raisonnable de demander ça.

LA COUR: Mais c'est dans votre connaissance peut-être.

M. RANCOURT: Mais c'est dans ses connaissances aussi. Il peut le faire. Il peut demander à son assistant de le faire.

C'est public, monsieur le juge.

LA COUR: Tous les historiques?

MR. DEARDEN: Your Honour ---

M. RANCOURT: Je n'ai pas à faire son travail

pour lui.

MR. DEARDEN: --- the crucial point of the -- the refusal at page 33 is I want the list of friends to know the extent of harm that he has caused with his public and he says there's no private Facebook messaging or Tweets because he's sending out this information about this lawsuit and about Joanne St. Lewis to ---

THE COURT: On the bulletin board.

MR. DEARDEN: --- a part of the -- well, 407 people we know he's got ---

M. RANCOURT: Non.

LA COUR: --- on Facebook.

So who's -- who's getting this?

M. RANCOURT: Non, c'est faux.

THE COURT: No, he's saying -- il dit ---

M. RANCOURT: C'est complètement faux.

Monsieur Dearden n'a -- peut-être que Monsieur Dearden n'a pas un compte Facebook alors il a aucune idée comment ça fonctionne mais je peux vous dire que même si j'avais 10,000 amis Facebook, ---

LA COUR: Oui?

M. RANCOURT: --- ils -- presque personne voit ces 'posts' parce que, pour les voir, il faut aller sur la -- le 'bulletin board' de Denis Rancourt et voir qu'est-ce qu'il a mis là.

LA COUR: Oui.

M. RANCOURT: Une très petite fraction de ces personnes-là vont faire ça. Donc, demander la liste de tous mes contacts ---

MR. DEARDEN: That's new evidence.

M. RANCOURT: --- de tous mes contacts --
demander la liste de tous mes contacts, c'est
beaucoup trop intrusif parce que ---

LA COUR: Mais là, est-ce qu'il peut demander qui
est-ce qui ont accédé à votre Facebook ---

M. RANCOURT: Non, parce que je ne le sais pas.
Personne le sait.

Les gens peuvent aller voir un 'bulletin board'.
Je ne sais pas quand Monsieur Dearden va voir le
'bulletin board' sur Facebook. Je sais pas
quand d'autres personnes du public le font. Je
sais pas quand mes contacts le font. Je sais
rien de ça.

Tout ce que je sais c'est qu'ils peuvent aller le
voir. Mais jugeant des -- jugeant des
commentaires que les gens donnent, c'est un très
très petit groupe qui le regarde parce que c'est
un très très petit groupe qui font des
commentaires sur ce qui est mis sur ce 'bulletin
board'.

Et donc, c'est ---

MR. DEARDEN: That's new evidence, Your Honour.

M. RANCOURT: --- c'est faux. C'est faux --
c'est faux de penser que c'est -- j'ai envoyé
des messages à 500 personnes. C'est
complètement aberrant.

Il y a un 'bulletin board' et les personnes qui
veulent le consulter vont le consulter et ceux
qui veulent pas le consultent pas.

Et quand les 'posts' sur ce 'bulletin board',
sont trop vieux, ils sont difficiles à voir et
les personnes ne peuvent pas les regarder.

Facebook les élimine après un certain temps.
 Moi, des fois, j'aurais aimé aller voir des vieux
 'posts', c'est pas possible de les trouver, de
 les obtenir. Ils sont -- ils sont -- ils sont
 de moins en moins accessibles plus ils sont
 vieux et, souvent, ils disparaissent et,
 souvent, j'ai cherché des choses que je suis
 absolument pas capable de trouver, que Facebook
 me donne plus accès parce que c'est trop vieux.

LA COUR: Mais ce sont des réponses qui auraient
 dû peut-être être -- peut-être question posée ou
 réponse donnée ---

M. RANCOURT: Mais la question était pas claire.

LA COUR: --- à place de ---

M. RANCOURT: Monsieur Dearden a l'impression --
 il veut -- il veut faire croire que j'ai envoyé
 des messages à 500 personnes. C'est faux.

C'était ça la question:

« Je veux tous les messages vous avez
 envoyés. »

Alors, j'ai répondu à la question.

LA COUR: O.k.

So, next question. Prochaine.

On est rendus à 6h00.

M. RANCOURT: Alors, on est rendus à 795, je
 crois? Ça c'est la même question sur Facebook.
 Donc, on l'a déjà couvert cette question.

Sept cent quatre-vingt-seize (796):

« I'm not going to argue with you ..." »

MR. DEARDEN: We really should be moving to the
 Twitter account, Your Honour, because all those
 other questions relate to the same subject.

THE COURT: Okay, let's go to Twitter.

M. RANCOURT: Attendez, il y a la question ---

MR. DEARDEN: And Twitter is the same as Facebook.

LA COUR: Twitter c'est la même chose; hein?

M. RANCOURT: Oui, c'est la même -- c'est les mêmes concepts.

Mais, attendez, c'est quoi la question 845?

O.k., c'est la même chose. Ensuite ---

LA COUR: Neuf cent soixante-six (966), c'est spécifique à Monsieur Hickey.

M. RANCOURT: Oui, et ça j'ai déjà répondu que je n'avais pas envoyé de messages. Donc, il n'y en a pas de ces messages-là qu'il cherche.

Neuf cent soixante-quatorze (974):

« Facebook messages ... »

J'ai déjà dit -- regardez à la -- en bas de la page 36, j'ai dit -- c'est dans le 'transcript', j'ai dit:

« Je l'ai déjà fait. Il y a pas d'autres messages. »

J'ai complètement répondu à cette question-là; vous voyez?

C'est le 'transcript', page 335, lignes 24 à 25.

On peut aller voir le 'transcript' si vous voulez, monsieur le juge.

LA COUR: Non, pour la -- juste pour que je le note, c'est quoi encore?

M. RANCOURT: Alors, c'est écrit dans mes notes mais c'est le 'transcript' à la page 335, les lignes 24 à 25 où je dis:

« Je l'ai déjà fait. Il y a pas d'autres

messages. »

D'accord?

LA COUR: O.k. Prochaine?

M. RANCOURT: Ensuite, « Twitter account »,
Question 856. Je comprends pas la question:

"... because you, for instance, ... National Post article and I want to know who you're sending information via Twitter about this libel ... who you're sending information to ..."

Alors, il veut savoir à qui j'envoie de l'information et là là -- là là, c'est vraiment tiré par les cheveux parce que, regardez, Twitter c'est un 'bulletin board' et Twitter est complètement public. N'importe qui peut aller voir qui sont mes contacts Twitter et quand je mets quelque chose sur Twitter, tout le monde peut le voir et -- ou pas le voir.

Donc, beaucoup de mes contacts ne vont jamais le voir parce qu'ils vont pas le regarder.

Par exemple, moi, j'utilise très peu Twitter, donc, tous les -- tous les personnes -- les -- je sais pas combien de personnes qui mettent des messages Twitter sur le 'bulletin board', je les vois jamais parce que je vais jamais les voir. J'ai aucune idée qu'est-ce qu'ils se disent entre eux, qu'est-ce qu'ils ont pu dire parce que je vais pas les voir.

Donc, de demander qui sont ces personnes-là, c'est une fausse -- c'est -- c'est une mauvaise question pour deux raisons: premièrement, c'est pas des gens à qui j'envoie des messages, c'est des gens qui peuvent 'poster' sur ce 'bulletin

board'. C'est tout.

Deuxièmement, cette information-là est déjà publique. Elle est complètement accessible.

LA COUR: Mais les Twitter ---

M. RANCOURT: Monsieur Dearden ---

LA COUR: Les Twitter que vous avez 'postés', mettons -- je sais pas si c'est le bon terme ---

M. RANCOURT: Oui.

LA COUR: --- sur votre -- votre compte ou 'bulletin board' Twitter ---

M. RANCOURT: Oui.

LA COUR: --- est-ce que vous allez fournir à?

M. RANCOURT: Il les a déjà, il les a imprimés. Il nous les montre à tous les jours.

THE COURT: So you have what he published on the -- on the ---

M. RANCOURT: Bien sûr qu'il l'a.

THE COURT: --- bulletin board for Twitter; is that right?

M. RANCOURT: Bien sûr, c'est dans ces documents. Il arrête pas de nous les montrer. Il y a plein de documents ici d'affaires Twitter qu'il a imprimées.

LA COUR: Well, you published it on the Twitter board and anyone has access to it ---

M. RANCOURT: Oui.

THE COURT: --- who wants to -- si quelqu'un, n'importe qui ---

M. RANCOURT: Monsieur Dearden a accès si y veut et il -- il arrête pas d'imprimer ces choses-là et de nous les montrer en cour.

LA COUR: O.k.

MR. DEARDEN: So I want to know who he tweeted to.

THE COURT: Did you tweet them -- I don't think he tweeted to anybody. That's what he's saying. He just tweeted to the bulletin board.
C'est ça?

M. RANCOURT: Oui, bien sûr. C'est comme ça que ça marche.

LA COUR: Vous avez pas 'tweeté' à monsieur ou madame? C'est pas comme un courriel?

M. RANCOURT: Monsieur Dearden a zéro connaissance de 'Tweeting'. Je peux vous dire ça d'après les choses qu'il est en train de dire. Il a aucune notion que on ne 'tweet' pas à quelqu'un, on 'tweet' sur un 'board' ---

LA COUR: Oui?

M. RANCOURT: --- et ces gens-là voient ce qu'on 'tweet'.

Et tout le public peut le voir aussi.

MR. DEARDEN: Not so.

M. RANCOURT: Et c'est pour ça que Monsieur Dearden a tous ces documents de 'tweeting'. Il les imprime quand il veut.

LA COUR: Next. Prochaine question.

M. RANCOURT: C'est -- c'est des questions pas raisonnables. Je sou mets que c'est des questions pas raisonnables.

Questions 136 à 143, je pense qu'il -- Monsieur Dearden admet que j'ai répondu à ça.

LA COUR: Oui.

M. RANCOURT: Ensuite, Question ---

LA COUR: Quand -- investigation du -- de Maître

Dearden, page 40.

M. RANCOURT: Oui.

Alors, ça c'est important parce que il y a eu une décision de la Cour IPC que je peux vous montrer qui contre les affirmations de Monsieur Dearden. Voici, monsieur le registraire.

Monsieur Dearden a déjà une copie mais je lui redonne une.

Alors, ça c'est une décision du -- d'un 'adjudicator' qui est Adjudicator Stephanie Haley au 'Information and Privacy Commissioner' parce que, quand j'ai fait la demande dont se plaint Monsieur Dearden -- qu'il dit que c'était malicieux pour moi de faire cette demande-là -- l'Université d'Ottawa a dit la même chose. Elle a dit cette demande est malicieuse, donc, on refuse de répondre à vos questions.

Et donc, je suis allé en appel de cette décision-là et on a ici le résumé de cet appel-là. À la première page, ça dit:

« The Appellant made a request to the University for information regarding a specified professor. The University issued a decision advising the Appellant that his request was frivolous and vexatious on the basis that it was made for a purpose other than obtaining access and was made in bad faith. The University's decision is not upheld and the University is ordered to provide a decision to the Appellant. »

MR. DEARDEN: So two things, Your Honour ---

M. RANCOURT: Et ---

MR. DEARDEN: --- first of all ---

M. RANCOURT: J'ai pas fini.

MR. DEARDEN: --- this is a request ---

M. RANCOURT: J'ai pas fini.

MR. DEARDEN: --- regarding a professor, not
me ---

M. RANCOURT: Non.

MR. DEARDEN: --- which is this. That's what I'm
asking him about and it's not dealing with
malice, it's talking about whether it was a
frivolous and vexatious request.

M. RANCOURT: Bad faith.

MR. DEARDEN: And all this decision says -- all
this decision says is: University, we disagree
with you for now and give him a decision. Give
him a decision on his request.

M. RANCOURT: Alors ---

MR. DEARDEN: I want to know why he's researching
me ---

M. RANCOURT: O.k. ---

MR. DEARDEN: --- as counsel for a libel
claimant.

M. RANCOURT: --- je peux vous dire, monsieur le
juge ---

MR. DEARDEN: He refuses to answer.

M. RANCOURT: --- que cette demande-là -- cette
décision-là est exactement la demande dont parle
Monsieur Dearden où j'ai demandé à propos de lui
et à propos du professeur ---

LA COUR: Vous avez fait une recherche ---

M. RANCOURT: Accès à l'information.

LA COUR: Concernant Maître Dearden?

M. RANCOURT: Oui.

LA COUR: Et de qui? Vous avez ---

M. RANCOURT: Et la Professeure St. Lewis en même temps, dans la même demande et cette demande-là ---

LA COUR: Une demande à l'Université?

M. RANCOURT: Oui.

Accès d'information à l'Université.

MR. DEARDEN: He wants to know my donations to the University of Ottawa. He wants to know what contracts I have.

M. RANCOURT: Oui.

MR. DEARDEN: Completely irrelevant to this libel action but malice it is.

M. RANCOURT: Très bien, on connaît votre opinion, Monsieur Dearden. Merci de la partager.

LA COUR: Donc, vous l'avez faite cette demande ---

M. RANCOURT: Je l'ai ---

LA COUR: --- à l'Université pour donner toutes les -- les dons ---

M. RANCOURT: Oui.

LA COUR: --- les contrats que Maître Dearden a ou toutes les relations ---

M. RANCOURT: Avait avec l'Université, et cetera. Oui, j'ai fait cette demande-là.

LA COUR: Donc, lui, il demande -- c'est quoi la question?

M. RANCOURT: Et la question -- bien, attendez, je ---

MR. DEARDEN: Why?

LA COUR: Pourquoi est-ce que vous l'avez ---

MR. DEARDEN: I asked him why.

LA COUR: Pourquoi vous l'avez fait ça?

M. RANCOURT: O.k., je veux lire le paragraphe 60 de cette décision.

LA COUR: Oui, mais la question il pose c'est pourquoi vous avez fait ça.

M. RANCOURT: Oui, et le paragraphe donne la réponse.

LA COUR: O.k.

M. RANCOURT: Le paragraphe 60 dit:

"I adopt the approach set out by the Senior Adjudicator for the present appeal. The Appellant has provided the purpose behind his request which is the subject of this appeal. I find his reasons to be reasonable and I find that his request is not for a purpose other than to obtain access. Accordingly, I find that the University has not established Section 5.1(b)."

MR. DEARDEN: So what's the purpose?

M. RANCOURT: Donc, ---

LA COUR: C'est quoi ---

MR. DEARDEN: That's the question.

LA COUR: C'est quoi le but que vous l'avez ---

M. RANCOURT: Le but est clair et il est dans le -- donc, je vais me référer à mon 'Statement of Defence'.

Là, je cherche le 'Book of Pleadings' qui est rendu où? Je pense que je l'avais -- je vous l'avais montré tantôt. Où est-ce que j'ai mis ça? Ah, je l'ai ici.

Si on prend le 'Book of Pleadings', monsieur le juge, le -- 'the Book of Pleadings', il y a un 'Statement of Defence' là-dedans.

LA COUR: Oui.

M. RANCOURT: Et si on va à la page 20, j'ai expliqué dans les paragraphes 61 à 67 que j'allais argumenter que c'était une action:

« ... the legal action is improper because it constitutes an action by direct or indirect proxy ... »

Donc, je veux établir que l'Université dirige cette action et je veux établir, donc, qu'il y a -- que c'est inapproprié et, donc, qu'il y a possiblement des attaches financières entre l'Université et Maître Dearden qui pourraient amener des évidences comme quoi cette action est une action qui est un abus de processus dans le sens que c'est une action 'by proxy'.

Et, donc, c'est -- c'est ça la -- c'est ça la raison que j'ai fait ces recherches-là pour les dons que Monsieur Dearden a pu faire à l'Université, et cetera, et je pense que c'est une ---

LA COUR: Et même si Monsieur Dearden y a donné un don de \$1,000 ou \$500 ou \$100, je sais pas, à l'Université?

M. RANCOURT: Mon point est que j'ai le droit de faire une demande d'Accès à l'information qui est légitime, qui a été jugée comme étant légitime et non fait en mauvaise foi.

J'ai le droit de faire une demande d'Accès à l'information et Monsieur Dearden a le droit de

répondre à cette demande-là en disant: Je pense que c'est trop intrusif et qu'il a pas une bonne raison.

Il a le droit de faire des représentations.

LA COUR: Mais, de toute façon, selon vous c'est pas pertinent; c'est ça?

C'est pas pertinent ou?

M. RANCOURT: Qu'est-ce qui est pas pertinent?

LA COUR: Bien, la raison pourquoi est-ce que vous avez fait des recherches à l'Université à propos de Monsieur Dearden?

M. RANCOURT: Il a pas besoin de savoir mes raisons parce que c'était une demande tout à fait appropriée et j'avais mes raisons et ça été jugé approprié et de bonne foi par le IPC.

Donc, il n'a pas à -- à suggérer que c'est inapproprié ou que c'est malicieux ou à poser des questions de ce type-là.

MR. DEARDEN: Your Honour, the law that governs FIPA, which is what we're talking about ---

THE COURT: Right.

MR. DEARDEN: --- the *Freedom of Information and Privacy Act* and this decision is completely irrelevant to the -- to why I've asked this -- him this question and he's actually given me an answer for the first time.

He said the purpose is that I guess he's going to bring the Champerty Motion against me.

THE COURT: You're somehow directing a proxy ---

MR. DEARDEN: Presumably.

Well, that's the first time he's answered:

"Why are you making this FIPA request going

back to 2007 on me?"

That is malice, Your Honour. What he's doing here, to go after me -- looking for teaching contracts, donations -- that's malicious and he's -- he's given us an answer for the first time so he's got to be compelled to answer that under oath in a re-examination and I have many other things to ask him ---

M. RANCOURT: Est-ce que ---

MR. DEARDEN: --- when he accuses me of having financial attachments to the University of Ottawa ---

M. RANCOURT: Monsieur le juge ---

MR. DEARDEN: --- such that I'm a proxy for the University of Ottawa.

M. RANCOURT: Monsieur le juge, est-ce que vous allez ---

LA COUR: C'est ça votre position?

M. RANCOURT: Hum?

LA COUR: C'est ça c'est votre position.

M. RANCOURT: Oui, c'est une de mes défenses, c'est ça.

Et ---

LA COUR: O.k. Prochaine --

M. RANCOURT: --- est-ce que vous allez juger la question de malice que Monsieur Dearden est en train d'avancer?

LA COUR: Ah, je suis pas pour décider la question de malice.

J'y pose simplement quelle question doit être répondue puis les conséquences.

Donc, ça ça sera pour un autre -- c'est-tu

malicieux? C'est-tu juste curiosité?

C'est-tu ...

Bon, ça c'est pas pour moi à ...

M. RANCOURT: Merci.

Dans ce cas-là, j'apprécieraï que Monsieur Dearden arrête de le répéter sans cesse mais ça c'est une autre question.

LA COUR: Non, mais y veut que la -- y veut une réponse. Il va alléguer que c'est -- ça démontre une attitude malicieux de ta part.

M. RANCOURT: Oui.

LA COUR: C'est ça. C'est ça.

M. RANCOURT: Oui.

LA COUR: C'est pas du surpris là que ---

M. RANCOURT: Oui.

LA COUR: --- y dit que c'est ---

M. RANCOURT: Mais il a pas ---

LA COUR: --- c'était pas de bonne foi d'avoir fait ça.

M. RANCOURT: M'hm.

LA COUR: C'est pour ça qu'y disent.

M. RANCOURT: Mais ---

LA COUR: Donc, je dis pas que y a rien ---

M. RANCOURT: M'hm.

LA COUR: Je dis pas qu'y a pas de conséquences.

M. RANCOURT: D'accord.

O.k., la prochaine question ---

LA COUR: Vous faites une allégation assez sérieux qu'y agit comme un 'proxy' pour attaquer vous à cause de -- c'est une allégation que vous faites assez sérieux ou votre raisonnement.

M. RANCOURT: C'est -- c'est ma raison. Je

l'explore. Je ramasse de l'information et j'explore les possibilités. C'est tout.

LA COUR: O.k.

M. RANCOURT: Il y a rien de malicieux là-dedans. Je fais une demande d'Accès à l'information qui est légitime. Je vois pas pourquoi Monsieur Dearden peut avancer ---

LA COUR: Prochaine. Prochaine question.

M. RANCOURT: O.k.

MR. DEARDEN: Page 43, "Defendant's Lack of Qualifications to Publish Articles".

Page 43 has been answered.

M. RANCOURT: Attends -- attends ---

MR. DEARDEN: Forty-four (44) has been answered.

M. RANCOURT: Question -- Question ---

MR. DEARDEN: Mr. Rancourt, ---

LA COUR: On tombe encore ---

MR. DEARDEN: --- you've been given more than an hour and half of what your allocated time is.

LA COUR: Là, la dernière chose là c'est ---

M. RANCOURT: Cinq cent ---

MR. DEARDEN: It's his investigation of me. We've covered Section S ---

M. RANCOURT: O.k.

MR. DEARDEN: --- which is page 40 to 42 ---

M. RANCOURT: Monsieur Dearden, ça m'aide pas vos -- vos interventions m'aident pas du tout. J'essaye juste de m'orienter ici là. Alors, on est ---

THE COURT:

« Professor St. Lewis acted like Rock's House Negro ... »

M. RANCOURT: On est à quelle page?

LA COUR: Page 45.

M. RANCOURT: Donc, 43, les réponses ont été données déjà.

La question 32 ce n'est pas une question. Um, 45.

O.k., donc, là, vous pouvez voir si je vais à l'onglet 1B, page 17 de mon -- de mon affidavit ---

LA COUR: Ça c'est les mêmes -- ça c'est les mêmes questions sur -- c'est la question d'opinion sur les faits ---

M. RANCOURT: Non, non, non, c'est pas la même chose. Non.

LA COUR: Non, mais ça -- c'est partie ---

M. RANCOURT: Il y a un point différent.

LA COUR: Ce sont c'est quoi les faits que vous vous basez pour conclure que Madame St. Lewis a agi comme Allan Rock's 'House Negro'?

It's the same -- very similar question.

M. RANCOURT: Oui, mais je veux faire un point qui est quand même important ici, à l'onglet 1B, page 17, si vous permettez.

O.k. Dans le ---

LA COUR: Mais ça c'est assez -- une question assez fondamentale.

M. RANCOURT: Oui.

LA COUR: Sur quels faits vous vous basez pour dire -- pour faire cette -- c'est question de vérité, question de faits que vous pouvez vous baser -- une personne peut baser une opinion.

M. RANCOURT: O.k. Monsieur ---

LA COUR: Il faut le dire.

M. RANCOURT: Monsieur le juge ---

LA COUR: Il faut dire c'est que -- sur quelle base vous avez pris cette ---

M. RANCOURT: M'hm.

LA COUR: --- c'est ça qui manque.

M. RANCOURT: J'aimerais dire la chose suivante.

LA COUR: Oui.

M. RANCOURT: Nous avons eu sept heures d'interrogatoire et, dans cette section de questions-là, le 'transcript' montre ce qui s'est passé et je -- je l'ai -- je l'ai copié en partie ici.

Vous voyez, je dis dans le 'transcript':

« Monsieur Dearden, si vous voulez, on peut prendre chacun des documents. Je peux les regarder devant vous et je peux vous dire, vous voyez ça, ça suggère telle affaire, et cetera.

Si vous voulez, on peut faire ça maintenant mais donnez-moi une chance. Donnez-moi les documents, un à la fois, et je vais répondre -- vous répondre à vos questions. »

Et, lui, il dit:

« No, what I will give you the opportunity to do to avoid a Refusals Motion is that you can send me a list of that. »

Et, moi, je dis: "Non."

Alors, ça c'est typique de comment ça s'est passé. Moi, j'offrais de répondre et lui me disait: Non, je veux poser 5,000 autres questions en plus et je veux juste poser mes

questions et après je vais vous amener devant un juge et vous allez être obligé de me donner des réponses.

Et la seule façon que vous allez éviter ça c'est si vous me donnez des réponses écrites.

O.k.?

LA COUR: Là, vous êtes d'accord de répondre?

M. RANCOURT: Je -- je -- je -- je serais -- je connais pas les réponses.

J'étais d'accord à faire -- à faire l'exercice avec lui sur place. J'étais d'accord pour ça, à ce moment-là, mais je dois insister, monsieur le juge, pourquoi est-ce que Monsieur Dearden aurait droit à plus que sept heures de questions?

LA COUR: Non, non, non, non. Je pose cette question-ci: Est-ce que vous êtes d'accord à répondre à cette question:

« Sur quelle base -- quels sont les actes de Madame St. Lewis qui sont des actes d'un 'House Negro'? »

Il faut vous déclarer à un moment donné.

M. RANCOURT: J'aurais -- j'aurais besoin de prendre un avis.

LA COUR: Ah! Pas une méchante idée. J'ai déjà mentionné ça tantôt; it would be advisable.

Ça serait un conseil dans votre affaire ici ---

M. RANCOURT: Oui.

LA COUR: --- qui coûte beaucoup d'argent ---

M. RANCOURT: Oui.

LA COUR: --- dispendieux, beaucoup de temps.

Je vous conseille fortement, pour vos intérêts

même si ça -- ça vous coûte une heure ou deux de conseil d'un spécialiste -- ça peut pas être Monsieur -- Maître Dearden, ça serait ---

M. RANCOURT: Ah, c'est dommage qu'il est le meilleur. J'aurais aimé le consulter, lui.

LA COUR: Ah, il y en a d'autres qui sont bons dans ce domaine mais ça serait -- ça serait bon pour la gérance aussi de cette cause -- pour vous aussi, peut-être le Défendeur -- le Demandeur -- peut-être pour toutes les parties.

M. RANCOURT: Oui.

LA COUR: Parce que y a des approches qui sont utiles et y en a des approches qui sont moins utiles.

M. RANCOURT: Je ne sais pas -- je ne sais pas dans quelle mesure Monsieur Dearden a le droit de demander le genre de détails qu'il demande et je suis pas prêt à répondre avant d'avoir un certain conseil sur cette question-là.

LA COUR: O.k., mais vous demandez un délai sur ces questions?

C'est relié à d'autres questions aussi ou à une autre opinion.

M. RANCOURT: Sur cette question-là, je demanderais un délai -- c'est sûr -- avant de dire si 'oui' ou 'non' je veux répondre.

LA COUR: Bon, bien, je vais vous accorder du temps pour contacter pour avoir un conseil juridique.

Vous l'avez eu depuis le mois d'avril et ici est le mois -- ça fait ---

M. RANCOURT: Je peux vous dire, monsieur le

juge, que c'est très difficile parce que j'ai pas d'argent.

Et, d'ailleurs, si vous ne croyez pas que j'ai pas d'argent, je demande à soumettre un affidavit montrant mes états financiers mais ---

LA COUR: Non, c'est pas vraiment pertinent parce que si vous ---

M. RANCOURT: Mais c'est -- c'est pertinent parce que ---

LA COUR: --- vous avez lu -- vous avez lu la décision ---

M. RANCOURT: --- quand je cherche un avocat ---

LA COUR: Oui?

M. RANCOURT: --- ils demandent un dépôt et je ne peux pas leur faire un dépôt en ce moment.

LA COUR: O.k., mais ça c'est ---

M. RANCOURT: C'est très difficile.

LA COUR: --- c'est des autres critères. Je sais pas ---

MR. DEARDEN: Your Honour, I can't let that sit. He makes these representations. He's fraudulently transferred his interest in his house to his wife for a dollar.

There is no sympathy for this man to come before this Court and to suggest he can't afford to hire a lawyer.

He transferred an interest that's worth over 200,000 bucks to his wife for a dollar. It's just -- it's just awful to hear him make these representations to the Court.

M. RANCOURT: C'est effrayant ce que Monsieur Dearden avance.

LA COUR: O.k., mais là -- ça c'est pas vraiment -- c'est pas une collection de jugements que je suis en train de faire.

M. RANCOURT: Oui.

LA COUR: Ça c'est -- c'est pas ---

M. RANCOURT: Si ---

LA COUR: Mais vous avez des ressources limitées ---

M. RANCOURT: Oui.

LA COUR: --- en plus la raison pour vous essayer de s'en sortir de cette affaire dans une manière la plus équitable ou la plus moins coûteux et puis d'en continuer avec votre vie, franchement, parce que vous avez rien à gagner dans cette affaire; comprenez-vous?

M. RANCOURT: Ben, je pense que je vais gagner la cause parce que ---

LA COUR: Oui, oui, mais ---

M. RANCOURT: --- je pense que ma défense est -- est la bonne.

LA COUR: Vous avez aucune -- excusez, vous avez pas d'argent à faire.

M. RANCOURT: Non.

LA COUR: Comme Défendeur, on n'a jamais d'argent à faire.

M. RANCOURT: Mais je vais -- je vais au moins ---

LA COUR: Donc, je fais des conseils, j'ai donné des conseils, c'est pas à moi à faire ces décisions-là ---

M. RANCOURT: Oui.

LA COUR: --- mais je vous donne ce conseil ---

M. RANCOURT: M'hm.

LA COUR: --- et je vais vous donner une chance pour -- avant de répondre parce que, bon, les actes sur lesquels vous avez basé votre -- vos déclarations, bon, ça va être -- il faut que tu les -- il faut que tu les dises à un moment donné.

M. RANCOURT: Je -- je sais pas. Je vais demander conseil sur cette question-là.

LA COUR: O.k.

Donc, je vais vous donner quoi? Dix (10) jours?

M. RANCOURT: Ah, monsieur le juge, je peux vous dire que la prochaine motion c'est la motion de champartie. J'ai besoin de tout mon temps.

Je veux -- je veux pas faire des choses avant -- après le 13 décembre.

Vous pouvez me faire travailler Noël si vous voulez mais touchez pas rien avant le 13 décembre parce que Monsieur Dearden va -- il va me donner ses représentations que je n'ai pas vues encore et je vais avoir une semaine pour les étudier et j'ai un deadline de ce vendredi pour lui donner tous mes -- mes documents, donc, plusieurs livres que je me ---

MR. DEARDEN: No.

M. RANCOURT: --- je travaille comme un -- je travaille comme un fou pour les préparer. J'ai besoin de chaque minute. Je veux -- oui, oui, il va y avoir ---

MR. DEARDEN: That's just beyond ---

M. RANCOURT: --- beaucoup parce que il y a tous les 'transcripts' de -- des questions, y a tous

--- y a tous -- la motion champartie est la plus grosse motion qu'on a fait à date et j'ai besoin de toute mon énergie, de toute mon attention jusqu'à cette motion très importante.

Et je peux vous dire tout de suite, monsieur le juge, c'est à mon sens impossible de faire une motion comme ça dans une journée. On a attribué une journée mais il y a ---

MR. DEARDEN: Come on.

M. RANCOURT: --- il y a cinq témoins avec des 'transcripts' ---

LA COUR: Non. Non, non, non.

Mais on perd -- on suit un autre point.

M. RANCOURT: Oui.

LA COUR: Là, vous voulez avoir le temps de contacter un avocat sur cette question ici sur la base -- les bases ou les preuves, les faits sur lesquels -- ou les actions de la ---

M. RANCOURT: Si 'oui' ou 'non' je vais répondre.

MR. DEARDEN: Your Honour, he ---

M. RANCOURT: Oui.

LA COUR: C'est pas à votre choix que je vous donne, je vous donne un conseil peut-être de donner des réponses puis éviter des affaires ou ---

M. RANCOURT: Oui, oui, mais c'est ---

MR. DEARDEN: Your Honour, he -- Mr. Rancourt's motion record for the champerty motion is due November 30th and our -- U of O and Professor St. Lewis is December 7th. So he has December 3, 4, 5, 6, 7 to be consulting a lawyer.

You're giving him a break here to -- to consider

whether he should be answering the questions at
Section U ---

LA COUR: Donc, jusqu'au -- le 7 décembre d'abord
parce que vos -- vos documents seront déposés le
30 -- avant le 30 et là vous aurez pas les
documents de Maître Dearden.

M. RANCOURT: Ça va me prendre du temps de
trouver quelqu'un qui est disponible, qui
accepte de travailler pour presque pas d'argent

MR. DEARDEN: He's ragging the puck.

M. RANCOURT: --- et ---

LA COUR: Non, mais là, je vous donne jusqu'au 7
décembre pour consulter un avocat, pour conseils
que vous voudrez mais sur ces questions-là en
particulier que vous avez demandé ---

M. RANCOURT: Il y a pas de presse, monsieur le
juge, donnez-moi jusqu'au 20 décembre.

MR. DEARDEN: Your Honour, are you letting him
answer or get that advice on which questions in
Section U? We need to pin him down.

THE COURT: On Question 588, well, as I say, 589,
592.

MR. DEARDEN: Issue 1 -- So Issue 1 of Section U.

THE COURT: Issue 1 of Section U.

M. RANCOURT: J'ai pas -- pouvez-vous me répéter
les questions, s'il vous plaît?

LA COUR: Bon bien, Question -- page 45, 'Issue 1'
toutes les question.

M. RANCOURT: Attendez. Attendez.

Est-ce qu'on peut énumérer les questions, s'il
vous plaît?

Parce que là ---

MR. DEARDEN: They are numbered.

LA COUR: Oui. Y sont -- y sont listées ---

MR. DEARDEN: So Issue 1, Issue 2, Your Honour, is the same theme, the facts ---

THE COURT: Issue 2.

MR. DEARDEN: --- he's relying on that she's the 'House Negro' of Allan Rock.

The same with Issue -- Issue 3 as well, on fairness.

THE COURT: Issue 3 seems to be the same ---

MR. DEARDEN: Yup.

M. RANCOURT: Je sais pas, j'ai pas eu le temps de même ---

MR. DEARDEN: Issue 4 is the same.

M. RANCOURT: Toutes les questions de hyperliens c'est déjà répondu, je pense. J'ai pas besoin de consulter un avocat pour ça.

LA COUR: Non, ça c'est bon.

M. RANCOURT: Et ---

LA COUR: Moi, je vous dis pas de quoi de consulter un avocat.

M. RANCOURT: Oui.

LA COUR: En général, c'est une bonne chose. On a une -- dans un cas de diffamation, c'est une très bonne chose d'avoir des conseils, d'être informé de vos droits et puis ...

Donc, je pense que je l'ai dit deux/trois fois mais je le dis pas quoi faire, ça c'est pas mon -- à moi à faire Ça c'est à vous, même vous vous êtes choisi de vous représenter vous-même, vous avez ce droit. Bon.

Mais sur les Questions 1, 2, 3, 4 ---

MR. DEARDEN: Issues. Issues 1 to 4, Your Honour.

LA COUR: Oui, les Questions or Issues ---

MR. DEARDEN: Section U.

THE COURT: Under Section U. Number 5? What's that?

MR. DEARDEN: That's different, Your Honour.

THE COURT: That's a different one.

Who else was she referring -- who else were you referring to?

J'imagine c'est -- ça faisait référence à Professeur ---

M. RANCOURT: On peut traiter de cette question.

LA COUR: Hein?

M. RANCOURT: On va -- on va y arriver.

LA COUR: Oui.

M. RANCOURT: Mais je veux insister, monsieur le juge, donnez-moi jusqu'au 20 décembre parce que la motion de champartie, dans cette espace ---

MR. DEARDEN: No ---

M. RANCOURT: --- là, je vais être en train de travailler fort ---

MR. DEARDEN: You've been ruled on, Monsieur Rancourt.

M. RANCOURT: --- c'est la -- c'est la -- c'est la plus grosse ---

MR. DEARDEN: December 7th.

M. RANCOURT: C'est la plus grosse motion que j'ai jamais fait. C'est une motion très compliquée.

LA COUR: Non, mais ---

M. RANCOURT: J'ai besoin de chaque journée pour me préoccuper uniquement de ça.

LA COUR: Mais ---

M. RANCOURT: Il y a pas de presse avec les découvertes.

La motion champartie peut mettre fin à l'action. Il y a pas de raison de me -- de m'imposer des nouvelles choses ---

LA COUR: O.k., Monsieur Rancourt ---

M. RANCOURT: --- avant la motion.

LA COUR: --- là, je change mon idée. Je vous donne jusqu'au 20.

M. RANCOURT: Merci.

LA COUR: J'imagine -- I don't think much is going to change between now and the 20th, in any event.

M. RANCOURT: Exactement.

MR. DEARDEN: It's the precedent, Your Honour, because ---

THE COURT: I'm not ---

MR. DEARDEN: --- he never ever accepts a decision from the Case Management judge that he doesn't ---

LA COUR: Oh, I ---

MR. DEARDEN: --- like and then ---

LA COUR: Ça c'est à son ---

MR. DEARDEN: --- then you agree to give it to him and he'll do it the next time and it's just so unfair to Professor St. Lewis.

LA COUR: Well, I -- no, no, no, no, no, no, no.

M. RANCOURT: Non, non, non, non, non.

LA COUR: C'est pas un précédent, c'est ---

M. RANCOURT: Non.

THE COURT: It's not a precedent que je vous donne des chances. It's a first time I've heard a request that you seek or that -- que t'aurais un conseil juridique.

I think it would be a good thing for you ---

M. RANCOURT: M'hm.

LA COUR: --- and probably for you to have a -- I said an impartial competent libel lawyer's input.

That's how I see this case becoming a -- you know, not an octopus but multi-tentacles instead of focussing on the issues.

That's how I see it happening. It would be very helpful for you to have some advice on how to approach this whole case and getting some legal

...

M. RANCOURT: Oui.

LA COUR: Mais je dis ça ---

M. RANCOURT: Oui.

LA COUR: --- mais c'est à vous à décider. C'est pas à moi de dire ---

M. RANCOURT: Oui.

LA COUR: Y a aucun préjugé contre vous de décider non autrement.

M. RANCOURT: Oui.

LA COUR: Donc, c'est pas ---

M. RANCOURT: Mais j'apprécie beaucoup ---

LA COUR: C'est pas en médiation ici, je suis pas une conférence de règlement mais ça serait une approche de médiation.

M. RANCOURT: M'hm.

LA COUR: Je sais pas si y a une -- pour ça mais ça serait -- d'après moi, c'est toujours une bonne -- bonne chose. O.k.

M. RANCOURT: O.k.

On est rendus où là?

MR. DEARDEN: Issue 5, page 49, « Who's the House Negro? ».

LA COUR: Donc, c'est-tu -- est-ce qu'y a un doute que c'est la Professeure St. Lewis?

M. RANCOURT: Mais 49 vous avez dit?

LA COUR: Oui?

M. RANCOURT: Pourquoi 'Issue 5'? On est 'Issue' -- à ma page 49, c'est 'Issue 4'.

LA COUR: Oui, mais, moi, j'ai laissé -- vous pouvez avoir une -- bon, vous pouvez avoir un conseil juridique de n'importe quelle question. Mais les questions ---

M. RANCOURT: On est rendus ---

LA COUR: --- qu'on réserve -- que, moi, je vais réserver c'est les Questions 1, 2, 3, 4 sur ---

M. RANCOURT: 'Issue 1, 2, 3, 4'?

LA COUR: Oui.

M. RANCOURT: Donc, là, on ---

LA COUR: Sur 'U' -- under 'U'.

M. RANCOURT: On passe à ça ou je donne des arguments par rapport à ça?

LA COUR: Non, bien, vous -- vous avez demandé du temps.

M. RANCOURT: Oui, o.k. Donc, on est rendus à la page 50.

MR. DEARDEN: No, we haven't ---

LA COUR: C'est pas pour un -- we're going to be

-- o.k., vous devrez faire vos commentaires. La question c'est: Est-ce que vous décidez peut-être que de répondre à ces questions?

On n'est pas pour avoir une autre audience pour avoir un autre: « Maintenant, je veux faire des représentations. »

C'est pas ça que je vous dis, qu'on aura une autre date pour argumenter ces quatre-là. C'est pas ça.

M. RANCOURT: Je veux -- je veux faire les arguments ---

LA COUR: Vous devrez faire vos arguments dessus ---

M. RANCOURT: Oui.

LA COUR: --- sujet à vos droits de consulter un avocat.

M. RANCOURT: Oui.

LA COUR: Bon.

M. RANCOURT: Suite à votre décision. C'est ça?

LA COUR: Bien, je donnerai pas de décision peut-être avant.

M. RANCOURT: Avant -- ah oui.

LA COUR: Peut-être que oui, peut-être que non. Ce sont quatre questions qui sont ---

M. RANCOURT: O.k., si je comprends bien, les 'Issues 1, 2, 3, 4' ---

LA COUR: Je sais pas, ça va dépendre.

M. RANCOURT: --- on ne les touche plus aujourd'hui; est-ce que c'est ça?

LA COUR: Non, j'ai -- je pense que vous aurez pas une autre chance de faire des représentations.

M. RANCOURT: Ah! Donc, il faut les -- il faut les adresser.

LA COUR: Bon. C'est ça.

M. RANCOURT: Oui.

LA COUR: C'est on est ici.

M. RANCOURT: Oui, alors ---

LA COUR: Vous avez demandé pour -- de consulter un avocat.

M. RANCOURT: O.k. Donc, ---

LA COUR: Avant que je vais rendre une décision sur ces quatre-là, je vais vous donner cette chance.

M. RANCOURT: Oui.

LA COUR: Vous pouvez aviser par écrit que: Non, je tiens avec mes représentations ---

M. RANCOURT: Oui.

LA COUR: --- ou: Non, j'ai décidé que, oui, je vais donner ces -- une réponse.

M. RANCOURT: O.k.

Donc, il faut commencer avec 1.

LA COUR: Mais c'est pas mal toutes les mêmes choses.

Commencez avec la première.

M. RANCOURT: O.k., ça, 1, c'est déjà réglé dans le sens que j'ai besoin d'un avis avant de répondre.

LA COUR: Non, non, non, non. On n'est pas pour avoir une autre date, là.

Juste pour clarifier que j'ai pas ajourné ces choses-là. Je veux -- on n'est pas pour avoir un autre -- je vais vous donner la chance d'avoir une -- un avocat pour voir si vous

changez parce que, dans le moment, vous avez refusé.

Vous avez refusé à répondre.

M. RANCOURT: Oui.

LA COUR: O.k.?

Vous avez indiqué que, peut-être, avec un avis, vous changez d'idée ou je sais pas.

M. RANCOURT: Oui. Oui.

LA COUR: Mais ---

M. RANCOURT: O.k.

LA COUR: --- je vais vous donner jusqu'au 20 mais là y aura pas d'autres dates d'audience.

M. RANCOURT: O.k.

LA COUR: On n'est pas pour avoir un délai.

M. RANCOURT: O.k., donc ---

MR. DEARDEN: And he writes a letter to you, Your Honour, with -- on December 20?

THE COURT: Write a letter, copy to you, December 20th avec votre position. Pas plus deux pages.

M. RANCOURT: Bien, je sais pas qu'est-ce que le -- la personne qui m'avise va me dire alors je sais pas ---

LA COUR: Non, c'est des limites -- trois pages max vous me dites que: oui, je vais répondre; ou: non, je tiens avec ---

M. RANCOURT: O.k.

LA COUR: --- ma position.

M. RANCOURT: O.k.

Donc, vous dites trois -- vous voulez mettre une limite de trois pages?

LA COUR: Bien, c'est des -- c'est quatre questions, quatre/cinq questions.

M. RANCOURT: Disons cinq pages, double interligne?

LA COUR: O.k., cinq pages, double interligne.

M. RANCOURT: Cinq pages ---

LA COUR: Ça va changer quoi dans ---

M. RANCOURT: Ça change rien, monsieur le juge, c'est juste que ça donne moins de contraintes.

O.k., donc, deuxième question: 'Issue':

« What acts Joanne St. Lewis committed that lead you ... »

O.k., ça ma position c'est que c'est ---

LA COUR: Does anyone need a break? Is there a break required by -- on a quasiment fini.

MR. DEARDEN: The interpreters are saying they require a break.

LA COUR: Okay. Let's take 10 minutes and come back.

THE COURT CLERK: All rise.

--- Upon recessing at 6:34 p.m.

--- Upon resuming at 6:47 p.m.

THE COURT CLERK: Order, please. À l'ordre, s'il vous plaît. Veuillez vous lever. Please rise.

MR. DEARDEN: Your Honour, I just wanted the Court to note that Professor St. Lewis had to leave because she's got a class she had to teach.

THE COURT: Okay. That's fine.

MR. DEARDEN: Secondly, Your Honour, I did my argument in less than an hour in anticipation of the fact that Mr. Rancourt would be held to his one hour.

You've given him the privilege of close to three

hours and I'm requesting that he be done by 7:00 o'clock tonight.

The staff want to go, the translators are tired.

LA COUR: Donc, jusqu'à 7h00, max. Boom. Point final.

M. RANCOURT: Alors, je vais passer très rapidement.

LA COUR: O.k.

M. RANCOURT: Et je demanderais, dans ce cas-là, qu'il y ait pas d'interruptions. Je pense que c'est raisonnable de demander ça.

Alors, voici. On était rendus à la page 46 du document que je vous ai donné aujourd'hui; n'est-ce pas?

Et on est à la Question 602, par exemple, et la question est:

"I want to know what acts Joanne St. Lewis committed that lead you to conclude that she acted like a 'House Negro'."

Voici mon problème, monsieur le juge, je n'ai jamais conclu que le Professeur St. Lewis a agi comme un 'House Negro' tel qu'il est énoncé dans cette question. C'est faux et Monsieur Dearden le sait.

Les énoncés précis de mon 'blog' sont -- je paraphrase: These Access to Information documents suggest that Professor St. Lewis acted like the 'House Negro' of Allan Rock.

J'ai dit que des documents suggéraient qu'elle avait agi comme ...

Et cette question, donc, est une question truquée et inappropriée. Monsieur Dearden veut pouvoir

obtenir ma réponse pour qu'il puisse dire à tout le monde, au jury, que j'ai conclu que Madame St. Lewis avait agi comme un 'House Negro'. Il a dit que c'était elle. Il avait conclu ça à propos de elle. C'est donc une question inappropriée parce que c'est faux, je n'ai jamais conclu une telle chose. J'ai ---

LA COUR: Donc, la réponse c'est que tu n'as pas conclu telle chose.

M. RANCOURT: Exact.

LA COUR: Mais vous avez pas répondu. C'est ça.

M. RANCOURT: J'ai -- j'ai -- oui, j'ai répondu.

LA COUR: Ça veut dire que la réponse est que il y a aucun acte ou est-ce qu'il y a des actes? C'est ça qui ...

M. RANCOURT: J'ai répondu.

Monsieur le juge, j'aimerais vous corriger parce que j'ai répondu à l'onglet 1B. Sous mon affidavit, j'ai répondu précisément à cette question-là à la page 17. J'ai expliqué que c'était une question inappropriée et pourquoi c'était une question inappropriée.

Donc, j'ai répondu à cette question-là et j'ai -- j'ai reproduit ma réponse ici dans ce document.

Donc, toutes les questions de ce type-là, j'aimerais demander à la Cour de ne pas m'obliger à répondre à des questions qui me font dire des choses que je n'ai jamais dit.

Par exemple, quand Monsieur Dearden ose dire:

"Who is the 'House Negro'?"

c'est complètement inapproprié.

Je n'ai jamais dit que quelqu'un était un 'House

Negro'. J'ai dit que des documents d'Accès d'information que ces documents-là suggéraient qu'elle avait agi, dans ces circonstances-là, comme le 'House Negro' de Allan Rock.

Monsieur Dearden sait que les mots précis sont importants parce que c'est une cause de diffamation mais il veut pouvoir arriver devant le jury et dire: Je lui ai demandé qui est le 'House Negro' et il m'a répondu: C'était Joanne St. Lewis. Donc, il la traite de 'House Negro'. Et c'est faux, je n'ai jamais dit ça et je n'oserais jamais dire ça.

Et ces questions-là de Monsieur Dearden sont ---
LA COUR: Vous pensez qu'une personne -- mais ça c'est vraiment les mérites de la question.

M. RANCOURT: Oui.

LA COUR: Une personne raisonnable qui lit ces -- votre 'blog' de façon objective conclura pas que vous faites référence que -- inférence que Madame St. Lewis était le 'House Negro'?

M. RANCOURT: J'ai ---

LA COUR: Selon vous, c'est une -- c'est pas ça?

M. RANCOURT: J'espère et je crois que toute personne raisonnable va lire ce que j'ai dit et le comprendre.

J'ai dit qu'il y a des documents que vous pouvez aller voir qui sont publics qui suggèrent -- à mon avis, c'est mon opinion -- ces documents-là suggèrent ---

LA COUR: De toute façon, ça c'est des mérites.

M. RANCOURT: Oui. Mais ces questions-là sont truquées ---

LA COUR: Selon -- selon vous, c'est pas une suggestion que vous avez faite?

M. RANCOURT: J'ai jamais nié que mon blog où je nomme le Professeur St. Lewis est à propos du Professeur St. Lewis et Monsieur Dearden sait très bien que j'ai jamais nié ça.

C'est établi. Ce n'est pas contesté mais ces questions-ci sont des questions truquées et inappropriées.

Et je trouve que c'est irrespectueux de ce qu'y se passe maintenant que de dire des choses comme:

« Who is the 'House Negro'? Dites-moi, who is the 'House Negro'?"

Ça c'est -- c'est dépassé les bornes de ce qui serait normalement acceptable et c'est dérespectuer la communication Claire et précise que j'ai voulu émettre et, ça, ça fait partie de ma défense. Et je ---

MR. DEARDEN: Your Honour, he didn't tell you about the headline which is being sued which is:

"Did Professor Joanne St. Lewis act as Allan Rock's 'House Negro'?"

There's no 'like' in there, there's no 'suggest' in there, it's point blank: Did she act as Allan Rock's 'House Negro'?

And to say that ---

M. RANCOURT: Oui.

MR. DEARDEN: --- it's disrespectful to ask you to identify who the 'House Negro' is in your February 11th blog is preposterous, in my submission.

M. RANCOURT: Très bien. Merci.

MR. DEARDEN: Preposterous.

LA COUR: J'ai compris votre point.

M. RANCOURT: Oui.

LA COUR: Et prochain item?

M. RANCOURT: Le -- le titre du 'blog' était une question qui -- et un titre c'est différent du texte. C'est reconnu comme principe. Tous les médias savent ça. C'est pour attirer l'attention sur la question et, ensuite, on regarde le contenu.

Alors, c'est -- j'ai jamais dit une telle chose que Monsieur Dearden veut avancer.

MR. DEARDEN: You wrote the headline.

M. RANCOURT: Oui.

MR. DEARDEN: He wrote the headline.

LA COUR: Prochain item. Prochain ---

M. RANCOURT: Donc, je -- ces questions sont déjà répondues parce que Monsieur Dearden sait que je suis en train de parler de Madame St. Lewis dans le 'blog'. Ce n'est pas une question qui est contestée.

La seule raison de ces questions-là c'est de créer un préjudice.

La Question 608, c'est ma position que c'est demander des choses qui sont 'litigation privileged'.

La Question 608, donc, c'est à mon sens 'litigation privileged' et je l'ai indiqué là. La Question 604 à 608 sont -- et 608 sont des questions qui sont trop détaillées, qui sont 'litigation privileged'.

Ensuite, la Question 609 ---

MR. DEARDEN: Sorry, where are we?

M. RANCOURT: On est à la Question 609 à la page 48.

LA COUR: Six cent huit (608) c'était -- 604, 606 ---

M. RANCOURT: Je vais passer maintenant à la Question 600 à la page 49.

LA COUR: O.k.

M. RANCOURT: Alors, la question est:

« You are not answering my question. Explain how a 'House Negro' acts. »

Alors, là, ça c'est équivalent à demander ma définition de 'House Negro'.

Alors, là, Monsieur Dearden ne me permet pas de demander à la Plaignante qu'est-ce qui est raciste et qu'est-ce qu'il l'est pas et comment elle l'entend mais il veut me faire dire ma définition de ce qu'est un 'House Negro'.

Alors, je trouve qu'il y a un double standard ici parce que ça se rattache à la définition et c'est -- comme dirait Monsieur Dearden, c'est le jury qui doit décider de la définition.

Ensuite, à la Question 550, à la page 50:

« Who is the 'House Negro' in your blog? »
Question dérespectueuse et dégueulasse. Je ne veux pas répondre à cette question-là parce qu'elle sous-entend que j'ai pointé du doigt quelqu'un et j'ai dit: You are a 'House Negro'.
Ce n'est pas du tout ça que j'ai fait. Le 'blog' ne -- n'affirme jamais une telle chose.

C'est une question dégoûtante qui va au-delà des

-- des normes de ce qui devrait être permis.

LA COUR: Ça sera -- ça sera la question vraiment pour le jury, vraiment.

M. RANCOURT: Oui, mais moi je veux pas répondre à cette question-là.

Moi, je peux répondre -- j'ai déjà répondu que le 'blog' est à propos de Joanne St. Lewis. Toutes les choses que j'ai dit concernant le Professeur St. Lewis.

Quand je nomme le Professeur St. Lewis, c'est à propos du Professeur St. Lewis.

Mais une question comme ça c'est simplement une question impropre et dégueulasse.

« Who is the 'House Negro' you are referring to? »

Il continue comme ça.

"... that you weren't referring to her as a 'House Negro'?"

et cetera, parce que le titre, et cetera.

Ensuite, il y a une question très importante à la page 51 qui est la question de ce -- de ce courriel que Monsieur Dearden cite, un Monsieur Stojanovic (ph).

Ça c'est toute un -- une affaire effrayante, monsieur le juge, je m'excuse que vous êtes obligé de regarder ça à une heure si tardive mais Monsieur Dearden ---

LA COUR: Là, vous êtes à quelle question? Page 51?

M. RANCOURT: Page 51, Questions 334 et 335.

LA COUR: Oui.

M. RANCOURT: Alors, regardez, Monsieur Dearden

5 cite un courriel qu'il prétend est un courriel qui vient d'un Monsieur Stojanovic et, ensuite, il dit dans le 'transcript' à la page 120, les lignes 20 à 22, il dit -- dans sa question, il dit:

« The real question, I don't actually have it handy ... »

parce que j'ai demandé de voir le courriel dont il parle. Il dit:

10 « I don't actually have it handy but how about that I make a copy of it and produce it to you later; okay? »

et je dis:

15 "Très bien."

Monsieur Dearden n'a jamais donné une copie de ce courriel. Il prétend l'avoir et maintenant, aujourd'hui, il montre ce courriel dans son -- à l'onglet 15 de son 'Compendium of Argument' et vous allez voir que c'est pas un courriel du tout.

20 **LA COUR:** Là là, vous êtes à la Question 300 ---

M. RANCOURT: Trois cent trente-quatre (334).

LA COUR: Let's get in touch -- ça c'est un courriel que vous avez envoyé à vos étudiants?

25 **M. RANCOURT:** Non, non, non, non, non.

C'est un courriel que Monsieur Dearden veut utiliser. Il prétend qu'il a ce courriel et, moi, je lui dis de me montrer.

30 Il dit: Ah oui, je pourrai vous le montrer plus tard. Et, en fait, il ne me l'a jamais montré parce qu'il ne l'a pas ce courriel, je pense.

MR. DEARDEN: No, Your Honour ---

M. RANCOURT: Regardez ---

MR. DEARDEN: --- just so I'm clear ---

THE COURT: He's ---

MR. DEARDEN: --- if you look at what he referred you to as Tab 15 of the Compendium, you go into ---

M. RANCOURT: Là, j'ai une interruption.

MR. DEARDEN: --- for -- well, you've just misrepresented something, Mr. Rancourt.

What I was referring to is what is in submissions that counsel for the University of Ottawa in the Labour arbitration made and they refer to an e-mail -- a copy of the following e-mail -- from Dr. Rancourt to one of the University students was forwarded by the student to the University following the Grievor's dismissal.

That is the page that would be marked "6" on Tab 15, Your Honour.

THE COURT: Yes.

MR. DEARDEN: Okay? So it says:

"From Denis Rancourt"

and then the name of who it was sent to is deleted and you see the last line:

"Let's get in touch with that Nigga".

My -- what I asked him is:

"You sent that e-mail to Mr. Stovanojic; correct?"

and that's what I asked him and that's what I want to know.

M. RANCOURT: Il m'a dit qu'il a ---

MR. DEARDEN: And he has the e-mail.

M. RANCOURT: Non.

MR. DEARDEN: I don't have the e-mail, I had this.

M. RANCOURT: Voici la question.

Donc, là, je veux expliquer. Le document qui est ici dans lequel il y a ce supposé courriel c'est un document produit par l'Université dans l'argument -- dans le 'Labour Arbitration'.

Ce document est très contesté et, moi, j'ai pas eu la chance de contre-examiner ce document-là. Mais vous voyez que le courriel en question n'a pas -- n'a pas les -- les noms à qui ça été envoyé et, dans la version que j'avais vue, il n'y avait même pas la date.

MR. DEARDEN: But he sent it.

M. RANCOURT: Il n'y avait même pas la date alors, là, je vais être obligé de vérifier ça.

LA COUR: O.k.

Mais ça c'était une question. Une question ---

MR. DEARDEN: It says:

« July 13th ».

LA COUR: --- ou est-ce que vous l'avez envoyé cet -- ce courriel avec un commentaire raciste? Non?

M. RANCOURT: Je n'ai -- je n'ai -- je n'ai pas ce courriel. Je n'ai pas un courriel comme ça.

LA COUR: Non, non, mais ça c'est votre ---

M. RANCOURT: Je conteste ---

LA COUR: --- connaissance.

M. RANCOURT: Je conteste -- je conteste l'existence même de ce courriel.

Il a été produit par un étudiant qui a envoyé ça à l'Université et l'Université l'a pris et là

mis dans ce document et l'a utilisé d'une façon inappropriée et le -- il y a eu -- il y a un débat entre l'Université et le syndicat à savoir la nature et l'origine de ce courriel qui n'est pas terminé.

LA COUR: Mais c'est une question -- ça c'est dans votre connaissance.

M. RANCOURT: Ça c'est dans mes connaissances.

LA COUR: C'est ça, y demande: Est-ce que vous l'avez envoyé ce courriel?

M. RANCOURT: Oui.

LA COUR: Question simple.

M. RANCOURT: Alors, je conteste l'existence de courriel. Je n'ai pas envoyé ce courriel, l'Université l'a reçu par l'intermédiaire de cet étudiant.

LA COUR: Bon, bien, répondez aux questions.

M. RANCOURT: Mais j'ai demandé de répondre après que j'aie une copie parce que je soupçonnais que Monsieur Dearden se basait là-dessus.

LA COUR: Donc, votre réponse c'est que vous n'avez pas envoyé ce courriel?

M. RANCOURT: Exact.

LA COUR: Bon, bien, donnez-y la réponse. C'est si simple que ça.

M. RANCOURT: Je n'ai pas envoyé ce courriel que l'Université a obtenu et a mis dans ce document.

LA COUR: O.k. Bien, dis-le. Ça sauve beaucoup de temps.

M. RANCOURT: Mais Monsieur Dearden voulait -- en tout cas.

LA COUR: Vous avez refusé.

M. RANCOURT: O.k.

LA COUR: On peut donner des réponses. C'est pas toujours des réponses -- o.k., c'est 'time up'.
'Time up.'

Your turn, Mr. Dearden.

MR. DEARDEN: No, Your Honour, I'm not going to have any reply.

THE COURT: Okay.

MR. DEARDEN: Thank you.

THE COURT: Thank you.

MR. DEARDEN: And thank the staff and the translators for staying so late.

THE COURT: Okay.

M. RANCOURT: Il y avait une dernière question, 329:

« Is he suing you today? »

L'étudiant qui aurait envoyé ce courriel ---

LA COUR: Oui?

M. RANCOURT: --- est-ce qu'il est en train de me poursuivre?

LA COUR: Oui.

MR. DEARDEN: Wasn't he just told « Time up »?

THE COURT: Well, 'time up', but do you want to say 'yes' or 'no'?

M. RANCOURT: Comme quoi c'est pertinent?

LA COUR: Non.

M. RANCOURT: Quelqu'un expliquez-moi pourquoi c'est pertinent.

THE COURT: Irrelevant so ---

MR. DEARDEN: You're denying that that e-mail was sent to him, Mr. Rancourt. Interesting.

M. RANCOURT: En quoi c'est pertinent?

MR. DEARDEN: The first time I've heard that.

THE COURT: Well ---

MR. DEARDEN: Anyway, time's up.

THE COURT: You say it's not relevant.

Okay, that's fine. C'est bien.

So thank you to the staff for staying as has already been ... Mr. Dearden ...

So keep these two piles separate, whoever brings these things up. That one is the first pile.

THE REGISTRAR: Going to bring it to your office?

THE COURT: You can bring it up to my office.

THE REGISTRAR: Yeah, okay.

THE COURT: Okay, thank you.

M. RANCOURT: Juste pour -- un dernier point.

J'ai nié l'existence -- j'ai nié que c'est moi qui avait envoyé ce ---

MR. DEARDEN: The translators are gone.

M. RANCOURT: Oh!

THE COURT: I think the translators are gone. Okay?

M. RANCOURT: O.k.

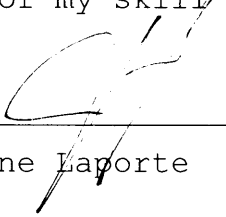
LA COUR: C'est bien.

THE COURT CLERK: All rise.

--- Upon adjourning at 7:03 p.m.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, Johanne Laporte, court reporter in the Province of Ontario
and Quebec, hereby certify the foregoing pages to be an accurate
transcription of the notes/recordings provided, taken to the
5 best of my skill and ability, and I so swear



Johanne Laporte

10 TRANSCRIPT ORDERED: February 28, 2013

TRANSCRIPT COMPLETED: April 19, 2013

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SUPERIOR COURT OF JUSTICE

BETWEEN:

JOANNE ST. LEWIS

v.

DENIS RANCOURT

TRANSCRIPT OF PROCEEDINGS

BEFORE:

Mr. Justice Robert J. Smith

APPEARANCES:

Mr. R. Deardon
Mr. D. Rancourt
P. Doody

for the Applicant
for the Respondent
for Ottawa University

R. Blackburn-Merengo
R. Commodore

Registrar
Reporter

Held at
Courtroom 21
161 Elgin
Ottawa, Ontario

Date
December 13, 2012

(i)

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--- Upon commencing at 10:05 a.m.

THE REGISTRAR: Good morning, Your Honour.

THE COURT: Good morning.

LA COUR: Bonjour. Les interprètes sont prêts?

L'INTERPRÈTE: Oui, monsieur le juge.

LA COUR: Bon, c'est bien. C'est bien.

Donc, est-ce qu'on devrait assermenter les interprètes? Affirmer, oui.

THE REGISTRAR: Can you please state your name and spell it for the record?

THE INTERPRETER: Renaud, R-E-N-A-U-D. First initial: D.

THE REGISTRAR: Would you like to swear or solemnly affirm?

THE INTERPRETER: Affirm.

DANIEL RENAUD, Interpreter, Affirmed

THE REGISTRAR: Can you please state your name and spell it for the record?

THE INTERPRETER: Yes, Borris; first name: Odette. Family name: B-O-R-R-I-S.

THE REGISTRAR: Thank you.

Do you wish to swear or affirm?

THE INTERPRETER: I'd like to affirm, please.

ODETTE BORRIS, Interpreter, Affirmed

THE REGISTRAR: Thank you. Please be seated.

LA COUR: Bon, il y a des questions préliminaires soulevées par Monsieur Rancourt. Ça c'est la première chose. On devrait trancher ces questions et, avant ça, les questions de temps.

La dernière fois, la dernière motion, on a été ici jusqu'à sept heures le soir qui est trop

tard, franchement. Le staff -- monsieur le greffier m'informe qu'il faut qu'il quitte à cinq heures, pile. Donc, il faut qu'on finisse à cinq heures.

Donc, le temps, il y a une proposition par Maître Deardon qu'on vous donne jusqu'à midi et demi.

Selon vous, vous voulez un ajournement, de toute façon?

M. RANCOURT: Monsieur le juge, vous avez parlé d'une proposition par Monsieur Deardon, je pense que vous faites référence à sa lettre du ---

LA COUR: Oui.

M. RANCOURT: --- du 11 décembre?

LA COUR: Oui.

M. RANCOURT: Est-ce que -- ou du 10 décembre? Je ne sais plus laquelle.

MR. DEARDON: Ten (10). Ten (10).

M. RANCOURT: Du 10 décembre, oui.

LA COUR: Le 10 décembre.

M. RANCOURT: Et est-ce -- moi, j'ai répondu à cette lettre de Monsieur Deardon. Est-ce que vous avez reçu ma réponse, monsieur le juge?

LA COUR: Oui. Je crois que oui.

M. RANCOURT: J'ai une copie ici si vous voulez.

LA COUR: Oui, c'est une objection. Oui, j'ai une copie de ça.

M. RANCOURT: Vous les avez? O.k.

Alors, dans cette lettre de réponse, monsieur le juge, j'ai ---

MR. DEARDON: Vous avez une copie? Thank you.

M. RANCOURT: J'ai affirmé, au paragraphe 9 --

j'ai dit en anglais:

"The Divisional Court has held that every litigant is entitled to have his case fully presented and fairly considered ..."

et j'ai ajouté:

"... that is my first concern in this most important motion that could end the action."

Donc, pour ce qui me concerne -- et j'ai aussi dit dans cette lettre que -- que, au paragraphe 8:

"As Your Honour knows, when I am not constantly interrupted, I successfully provide my best effort to make relevant, clear and concise arguments. I also welcome guidance and questions of clarification from the Bench."

Et au paragraphe 10, j'ai dit:

"It is now my position, from my limited experience, that post-hearing written submissions do not compensate for lack of time to be heard in person and I have expressed to the Court previously that one day of hearing for my Champerty Motion does not seem reasonable to me."

Donc, j'ai exprimé mon objection et mes raisons. Je m'engage, comme d'habitude, à être très efficace ---

LA COUR: Oui.

M. RANCOURT: --- et au point et si je suis sans interruption, je vais pouvoir faire mes points importants et les présenter pleinement devant vous, monsieur le juge.

Et j'invite votre questionnement sur la pertinence et votre direction mais je vais faire de mon mieux mais je ne ---

LA COUR: Non, j'ai pas -- sur le temps proposé -- les temps limites proposés, est-ce que t'as des soumissions autres que ça devrait prendre, je sais, une autre journée?

Je suis pas d'accord que -- que cette motion soit listée pour deux journées, trois journées, une semaine. Il faut qu'on en finisse de cette question.

Et puis, je vais vous entendre sur la proposition faite par Monsieur Deardon.

Donc, selon lui, on arrive à cinq heures. Il a divisé le temps. Il vous accorde plus de temps, je crois, que lui puis Monsieur Doody.

M. RANCOURT: Oui.

LA COUR: Est-ce que vous avez des commentaires sur ---

M. RANCOURT: Oui, j'ai des ---

LA COUR: Oui?

M. RANCOURT: Oui, j'ai des commentaires sur ça.

LA COUR: C'est quoi que vous proposez?

M. RANCOURT: Alors, voici ---

LA COUR: C'est qu'est-ce que vous proposez?

M. RANCOURT: O.k., j'ai un premier commentaire, c'est que les ---

LA COUR: Parce qu'il faut qu'on en finisse pour cinq heures.

M. RANCOURT: Oui.

LA COUR: Je veux diviser le temps entre vous et les deux autres procureurs. Ça c'est ---

M. RANCOURT: Voulez-vous que je donne ma réponse, monsieur le juge?

LA COUR: Oui.

M. RANCOURT: O.k.

Premièrement, le calcul de Monsieur Deardon est un petit peu défectueux parce que, dans les -- dans les questions préliminaires, ils auront droit de réponse. Donc, ça inclut beaucoup de leur temps aussi.

Donc, ce calcul est fautif pour cette raison-là et -- mais ma proposition, monsieur le juge, c'est que je crois que ce n'est pas raisonnable de tout faire ce qu'on a à faire dans une journée et je pense que ça pourrait prendre -- j'estime que ça se ferait mais j'ai une expérience très limitée donc c'est pas juste de me demander ça -- mais je pense que ça pourrait prendre deux jours et demi.

LA COUR: O.k.

Mais je suis pas d'accord que -- qu'on fixe deux jours et demi en ce fait que le Juge Beaudoin avait fixé un jour, à la fin d'août, et moi aussi j'avais fixé -- après vous avoir entendu -- une journée aujourd'hui pour entendre une motion.

Donc, c'est une motion. Je comprends que c'est une motion importante de champartie mais on va faire cette motion aujourd'hui, dans une journée. Donc, c'est le temps. C'est la question de temps.

Ils font ça à la Cour d'Appel avec des causes très importantes. Ils fixent des temps. Pour

une motion surtout, une journée, selon moi, c'est suffisant.

M. RANCOURT: Monsieur le juge, vous avez parlé du Juge Beaudoin ---

LA COUR: C'est un point surtout légal. C'est un point surtout légal.

M. RANCOURT: Vous avez parlé du Juge Beaudoin. À l'époque où on parlait du temps avec le Juge Beaudoin, je me suis objecté à ce moment-là et sa réponse a été, monsieur le juge ---

LA COUR: Oui?

M. RANCOURT: --- laissez-moi terminer -- sa réponse a été: On fixe une première date et on voit comment ça va.

Ça été sa réponse et c'est comme ça que j'ai toujours cru que ça allait fonctionner et je crois, dans mon expérience, que je n'aurai pas le temps de -- d'avoir justice en présentant mes arguments aussi bien que je peux les présenter dans une journée avec un horaire comme propose Monsieur Deardon. Je trouve ça fondamentalement injuste, monsieur le juge.

LA COUR: O.k.

Je ne suis pas d'accord avec -- c'est pas nécessaire de répondre parce que j'ai l'intention -- on a déjà fixé ça deux fois pour une journée puis j'ai l'intention de compléter cette matière aujourd'hui puis on n'est pas pour dépasser cinq heures.

J'ai dit ça deux/trois fois. O.k., on va suivre l'horaire proposé par Maître Deardon et puis vous avez jusqu'à midi et demi pour faire

vos représentations.

M. RANCOURT: Je -- d'accord. Je continue sous protestation.

LA COUR: O.k. J'ai compris. C'est noté.

M. RANCOURT: O.k.

Alors, une première note en commençant, monsieur le juge. Le Juge Beaudoin dans cette -- parce qu'il était celui qui faisait la gestion de la cause à l'origine -- avait dit à la Cour, une fois, qu'une motion de champartie c'est quelque chose d'extrêmement rare, qu'il n'avait pas vu dans sa carrière.

Et je voudrais faire juste un premier commentaire général sur cet effet-là parce que il y a eu très récemment dans les médias, à propos des « robots calls », le CBC a rapporté que le Parti Conservateur est en train de faire une motion champartie justement et, dans cet -- j'ai ici l'article médiatique -- juste pour intérêt général -- et dans cet ---

LA COUR: Là, la première chose c'est -- vous avez demandé un ajournement.

M. RANCOURT: Oui.

LA COUR: Est-ce que ---

M. RANCOURT: Ça c'était juste un commentaire ---

LA COUR: --- selon votre lettre -- lettre de confirmation, c'est indiqué que vous avez, bon, l'intention ou je ne sais pas si vous demandez un ajournement; oui ou non.

M. RANCOURT: Oui, absolument, je demande un ajournement et c'est la première question.

LA COUR: Mais là, c'est parce que tu veux faire

appel de la décision du Juge Annis qui a rejeté votre appel puis vous avez l'intention de faire appel à la Cour suprême du Canada, si j'ai bien compris.

M. RANCOURT: Exactement, monsieur le juge.

LA COUR: Donc, vous avez le plein droit de le faire et puis, si vous avez gain de cause, bon, ça va toute annuler plusieurs choses qui ont été faites dans cette action; n'est-ce pas?

M. RANCOURT: Oui, monsieur le juge.

LA COUR: Mais pourquoi pas qu'on procède avec cette motion même si vous voulez porter appel à la Cour suprême du Canada?

M. RANCOURT: Justement, c'est la question aujourd'hui, la première question: Pourquoi ajourner aujourd'hui.

LA COUR: Oui.

M. RANCOURT: Et donc, j'ai préparé ici mes arguments que je vais vous présenter.

Alors, premièrement -- et, excusez-moi, je vais changer de lunettes.

MR. DEARDON: Sorry, Mr. Rancourt, for interrupting.

Just for clarity, Your Honour, I assume that the -- the submissions you're hearing is timed and it counts as his allocation?

THE COURT: The time is fixed -- the time is fixed from the -- to 12:30; that Mr. Rancourt has till 12:30 today and he can use the time however he wishes.

If I grant the adjournment, it will be academic but -- and I haven't decided on that. I

can indicate that the chances of appealing to the Supreme Court of Canada on an interim motion on refusals given at either discoveries or cross-examinations which are interlocutory matters, that do not finally dispose of the main issue in this appeal which is a libel action, in my view, would be highly unlikely.

But, I'm not -- that's not my -- my decision to make. C'est pas à moi à faire.

But that is why, given the test for leave to appeal to the Supreme Court of Canada -- and I'm not sure it is to the Supreme Court of Canada, I'm not sure that's the correct avenue ---

MR. DEARDON: And for the record, Your Honour, we did notify Mr. Rancourt in my December 11th letter to you that the Supreme Court of Canada has no jurisdiction, in our submission.

THE COURT: It's not the right avenue.

MR. DEARDON: The Court of Appeal has been quite clear on that ---

M. RANCOURT: O.k.

MR. DEARDON: --- and he should be seeking leave of another Superior Court Judge on the refusal to get leave.

M. RANCOURT: Nous venons de perdre un bon cinq minutes ---

LA COUR: Oui.

M. RANCOURT: --- avec l'intervention de Monsieur Deardon.

LA COUR: O.k.

M. RANCOURT: Votre directive à propos du temps était très claire. Monsieur Deardon est un homme

très intelligent, il l'a compris, et on vient de passer cinq minutes à discuter toutes ces questions-là qui prend de mon temps.

LA COUR: O.k.

M. RANCOURT: Alors, j'aimerais ---

LA COUR: Allons-y. Allons-y.

M. RANCOURT: --- j'aimerais qu'on arrête les ---

MR. DEARDON: Sixty (60) seconds.

M. RANCOURT: --- les interjections de Monsieur Deardon.

Et en plus, monsieur le juge, Monsieur Deardon a fait référence à la lettre où il donne un argument légal. Cette lettre est contre les règles de la Cour ---

LA COUR: Mais ---

M. RANCOURT: --- il n'a pas le droit de communiquer directement avec vous pour des questions autres que la gestion de la cause et il a présenté et des autorités et des arguments légaux directement en communiquant avec vous. C'est contre la règle 1.09, je crois, qui est la règle. C'est contre cette règle-là et je m'objecte formellement à ce que vous ayez reçu cette lettre et aussi que Monsieur Deardon ose de façon répétée écrire directement la Cour pour faire de tels arguments qui sont des arguments sur la motion.

Alors, je veux signaler cette objection, monsieur le juge. Est-ce que vous la recevez?

LA COUR: Oui, j'ai noté votre objection.

M. RANCOURT: Est-ce que vous pourriez diriger Monsieur Deardon d'arrêter de faire de telles

choses?

LA COUR: Non, je ne fais pas de commentaire. Je vais vous entendre.

Et juste avant ça, vous avez aussi déposé des autorités selon les -- les -- le fardeau sur le Tribunal de aider quelqu'un qui est « self-rep », sans avocat.

M. RANCOURT: Oui, la raison principale ---

LA COUR: Vous avez -- vous avez pleinement déposé des motions, des factums, plusieurs documents, est-ce que vous avez -- puis vous avez fait une vingtaine de motions avec des factums et puis des contre-interrogatoires, et cetera, et cetera.

Juste avant, est-ce que vous avez des questions sur la procédure? J'imagine que non. Mais vous avez déposé tous ces documents disant que vous avez besoin d'aide comme une partie non-représentée.

M. RANCOURT: Non, monsieur le juge, j'aimerais corriger.

LA COUR: O.k.

M. RANCOURT: La raison que j'ai soumis ce document-là ---

LA COUR: Oui?

M. RANCOURT: --- c'est surtout dans mon argument par rapport à la validité de mes affidavits.

LA COUR: O.k.

M. RANCOURT: Parce que ces documents-là expliquent -- expliquent comment on traite admettre les évidences dans le cas spécial d'une personne qui est auto-représentée.

LA COUR: O.k.

Donc -- parce que si vous avez besoin d'aide pour des questions procédurales -- je crois que non, selon ---

M. RANCOURT: J'ai toujours besoin d'aide, monsieur le juge, et je vais la demander quand je vais en avoir besoin.

LA COUR: O.k., si vous avez besoin ---

M. RANCOURT: Et si vous -- si vous pensez que j'en ai besoin, je -- je suis -- je reçois votre aide.

LA COUR: O.k., parce que, d'après moi, vous avez pas besoin de ---

M. RANCOURT: Monsieur le juge, j'apprends à mesure ---

LA COUR: --- d'aide procédurale ---

M. RANCOURT: --- je fais de mon mieux et vous pouvez voir, d'après la qualité de mes soumissions, que j'aurais besoin d'un avocat parce que c'est pas des soumissions qui sont à la hauteur d'un avocat, c'est clair, mais -- et vous me l'avez déjà suggéré dans le passé.

LA COUR: Je l'ai suggéré mais c'est votre plein droit de -- de prendre la décision ---

M. RANCOURT: Oui.

LA COUR: --- d'être -- de représenter vous-même seul. Ça c'est votre droit.

M. RANCOURT: Alors, monsieur le juge ---

LA COUR: O.k.

M. RANCOURT: --- sur la question de la règle 1.09, j'aimerais quand même vous donnez une copie de cette règle-là parce que c'est un point

important et c'est une injustice à mon égard que Monsieur Deardon ait la permission de faire des arguments avant la motion.

LA COUR: Ça c'est l'ajournement. On parle de l'ajournement ici?

M. RANCOURT: Là, je parle d'une injustice procédurale qui a eu lieu dans cette motion et qui continue à avoir lieu et je parle ---

LA COUR: Procédurale ---

M. RANCOURT: Je parle ---

LA COUR: --- pour l'ajournement?

M. RANCOURT: Non, je parle en général, pour la motion en général, que ça soit -- c'était question d'ajournement ---

LA COUR: Non, mais la première question c'est l'ajournement.

M. RANCOURT: Oui.

LA COUR: Il faut qu'on établisse est-ce que vous avez -- c'est vous qui avez à fixer la date, c'est votre motion. C'était fixé pour la fin d'août, le 29 ou 26 d'août.

Là, c'était remis au 10 ou 15 -- on est quoi là -- le 13 décembre. Donc, ---

M. RANCOURT: Ce que j'entends, monsieur le juge, c'est que vous voulez pas entendre ma plainte sérieuse d'une injustice procédurale ---

LA COUR: O.k., oui, je vais l'entendre ---

M. RANCOURT: --- relatif à la règle ---

LA COUR: Je vais l'entendre ---

M. RANCOURT: --- 1.09.

LA COUR: Je vais l'entendre mais, première chose, ajournement, oui ou non?

Si il y a un ajournement ---

M. RANCOURT: C'est directement relié à l'ajournement parce que ---

LA COUR: O.k.

M. RANCOURT: --- les arguments que Monsieur Deardon a fait ---

LA COUR: Oui?

M. RANCOURT: --- étaient relatifs à l'ajournement.

LA COUR: O.k., si c'est pertinent à l'ajournement, je vais vous entendre.

M. RANCOURT: Bien sûr.

LA COUR: O.k.

M. RANCOURT: Et vous voyez dans sa lettre du -- du 11, en particulier, il y a sa lettre du 11 -- le 11 décembre, pas le 10 décembre, tout le premier paragraphe est un argument légal par rapport à si j'ai le droit de déposer cette chose devant la Cour suprême ou pas, que la Cour suprême n'a pas la juridiction, et cetera.

Cet argument légal n'aurait pas dû être présenté directement à vous avant cette motion. C'est ça mon point d'injustice procédurale.

LA COUR: Ça c'est la lettre du 11 décembre?

M. RANCOURT: Oui.

LA COUR: Qui note que la Cour d'Appel a pris une décision autre que vos procédures de faire appel à la Cour suprême ---

M. RANCOURT: C'est un argument légal avec des autorités à l'appui.

LA COUR: Oui.

M. RANCOURT: Et -- et je suis -- évidemment, je

pense que l'argument légal est faux et je vais l'expliquer pourquoi.

Mais mon point est qu'il y a une injustice procédurale et que c'est sans cesse comme ça, Monsieur Deardon se permet de vous écrire directement avec ces points de vue légaux, ces arguments légaux avec des autorités à l'appui directement en communiquant avec vous.

Voilà mon point, monsieur le juge.

LA COUR: Je suis le juge qui gère cette -- cette matière.

M. RANCOURT: Oui.

LA COUR: « The Case Management Judge », donc, c'est des situations assez uniques.

D'habitude, les parties n'écrivent pas au Juge parce que on attend qu'on écoute des plaidoiries en pleine Cour.

Mais comme Juge de gérance, je reçois des documents de vous, des documents de Monsieur Deardon, et puis -- mais, peut-être que ça fait partie du « case management » de cette cause.

C'est une cause assez unique dans les circonstances.

De toute façon ---

M. RANCOURT: Monsieur le juge ---

LA COUR: --- c'est pas une question que j'ai à trancher aujourd'hui; o.k.?

M. RANCOURT: Elle est importante parce que c'est une question de justice procédurale.

Il y a une distinction à faire entre la gestion de la cause où on parle des temps permis, et cetera, et faire un argument légal pour la

motion qui vient en communiquant directement avec vous.

Ça c'est une distinction qu'il faut faire et je refuse que Monsieur Deardon puisse continuer à faire ce genre de comportement pour des motions qui vont venir.

LA COUR: O.k., peut-être c'est pas une méchante idée mais je veux attendre, je ne sais pas, d'avoir -- de toute façon, cette question de: Est-ce que votre appel de la décision de -- qui rejette votre appel, est-ce que c'est la Cour d'Appel de l'Ontario?

Est-ce que c'est à la Cour suprême du Canada selon, je crois, c'est 41 du -- le « *Court of Justice Act* » ou est-ce que c'est un appel à un autre juge d'avoir une autre permission d'appel?

Ça, je l'ai pas à garder, je l'ai pas -- je fais aucune décision ---

M. RANCOURT: Merci.

LA COUR: --- sur vos -- vos approches d'appel.

Ça c'est à vous à -- à vous informer, franchement.

M. RANCOURT: Oui ---

LA COUR: Il y a un doute ---

M. RANCOURT: --- et je vais présenter mes arguments maintenant, monsieur le juge.

LA COUR: Il y a un doute que ça soit à la Cour suprême du Canada. Ça, ça me surprendrait bien gros si ça ça serait votre avenue d'appel.

M. RANCOURT: Monsieur le juge ---

LA COUR: Mais ---

M. RANCOURT: --- je vous demanderais de ne pas

préjuger la situation.

LA COUR: Non. Non, non.

M. RANCOURT: Vous n'avez pas entendu mes arguments encore.

LA COUR: Mais vous êtes sans avocat, donc, j'essaie de vous aider.

M. RANCOURT: Oui, merci, monsieur le juge.

LA COUR: De vous -- de dire que cette approche d'avoir permission de la Cour suprême du Canada pour une question de refus de questions aux examens au préalable, ça serait -- ça me surprendrait si vous aurez la permission.

M. RANCOURT: Monsieur le juge ---

LA COUR: Les chances sont très minimes.

M. RANCOURT: --- c'est la deuxième fois que vous énoncez cela ---

LA COUR: Oui.

M. RANCOURT: --- de façon -- en détail avant même que je puisse faire mes arguments.

LA COUR: Donc, ---

M. RANCOURT: Alors ---

LA COUR: --- je fais ça pour vous aider avec votre appel possible.

M. RANCOURT: Dans ce cas-ci, monsieur le juge, très respectueusement, ça ne m'aide pas à faire mes arguments.

Alors, voici. Monsieur le juge, est-ce que vous avez reçu ma confirmation de motion?

LA COUR: Oui.

M. RANCOURT: Alors, vous avez remarqué que j'ai dit dans cette confirmation que j'allais faire appel à la Cour suprême du Canada?

LA COUR: Oui.

M. RANCOURT: Merci.

LA COUR: J'ai bien lu. Je crois que oui ---

M. RANCOURT: O.k.

LA COUR: --- que c'est ça que vous avez noté, je crois?

M. RANCOURT: Tout à fait. Alors, je passe à mon prochain point.

La lettre que je conteste de Monsieur Deardon du 11 décembre suggérait que la Cour supérieure, la Cour suprême du Canada, n'avait pas la juridiction pour entendre ma permission d'appel.

Alors, j'ai amené ici la *Loi de la Cour suprême du Canada* ---

LA COUR: Pour aujourd'hui, j'assume que vous avez raison, que vous pouvez porter appel à la ---

M. RANCOURT: Ah bon.

LA COUR: Assumons que vous avez raison. Assumons que Monsieur Deardon y a pas raison dans cette matière ici.

M. RANCOURT: D'accord.

LA COUR: Là, est-ce que vous devrez avoir un ajournement?

M. RANCOURT: O.k., donc, vous -- vous allez faire votre décision en -- en me donnant raison sur le point que je peux.

LA COUR: J'ai pas dit que j'étais d'accord mais fais cette assomption.

M. RANCOURT: Mais si vous êtes pas d'accord, monsieur le juge, je veux faire mes arguments

pourquoi j'ai absolument le droit.

LA COUR: O.k., allons-y d'abord.

M. RANCOURT: Et voici donc. Je vous donne ici une copie de la Loi sur -- et j'attire votre attention à la section 40.1 de cette *Loi de la Cour suprême du Canada*.

Et on dit dans ce paragraphe:

« All appeals lodged at the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province ... »

"the highest court", donc, s'il y a une décision ---

LA COUR: Ça c'est la Cour ---

M. RANCOURT: --- finale en quelque part, on peut aller ---

LA COUR: Ça c'est la Cour d'Appel ---

M. RANCOURT: --- on peut aller.

LA COUR: Non, ça c'est la Cour d'Appel de l'Ontario.

M. RANCOURT: D'accord.

« ... whether or -- whether or -- whether or not leave to appeal to the Supreme Court has been refused by any other court where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, is one that ought to be decided by the Supreme Court or is for any reason or of

such a nature or significance as to warrant decision by it and leave to appeal from that judgment is accordingly granted by the Supreme Court."

Et le point 2:

"An application for leave to appeal under this section shall be brought in accordance with paragraph 58.1 ..."

Et le paragraphe 58.1 me donne 60 jours pour faire ça, j'ai noté ici.

LA COUR: Monsieur ---

M. RANCOURT: Maintenant, ---

LA COUR: Monsieur Rancourt, ça dit que un appel: « ... of the highest court of final resort in a province."

That is the Ontario Court of Appeal. That is not me, just for clarity.

M. RANCOURT: D'accord, j'ai compris.

LA COUR: O.k., donc, it's not ---

M. RANCOURT: Il est ---

LA COUR: --- appeal from a Superior Court judge's order that goes to Divisional Court with leave.

I don't know about Court of Appeal. I said I've not looked into this and that's not for me ---

M. RANCOURT: Monsieur le juge, je vous parle en français.

LA COUR: Oui. O.k., bien, on retourne en français d'abord parce que ---

M. RANCOURT: Et je vais -- je vais soumettre, monsieur le juge ---

LA COUR: Oui.

M. RANCOURT: --- qu'avec tout respect ---

LA COUR: Que je suis la Cour d'Appel?

M. RANCOURT: Non.

LA COUR: Bien, c'est ça, c'est pas ---

M. RANCOURT: Je vais soumettre avec tout respect que vous n'avez pas la juridiction pour décider si la Cour suprême a la juridiction dans ces circonstances.

LA COUR: Je suis d'accord avec vous ---

M. RANCOURT: Merci.

Et je vais chercher permission pour appel à la Cour suprême du Canada pour aller en appel de la décision du Juge Peter Annis du 29 novembre 2012.

LA COUR: O.k.

M. RANCOURT: Est-ce que vous avez une copie de cette décision?

LA COUR: Je crois que je l'ai vue à quelque part.

M. RANCOURT: Je vais vous donner une copie tout de suite, monsieur le juge.

LA COUR: Je crois c'est dans les « Université d'Ottawa » de fournir des copies de les décisions.

M. RANCOURT: Je vous donne une copie ---

LA COUR: Mais là ---

M. RANCOURT: --- à cet instant.

LA COUR: Là, je ---

M. RANCOURT: Juste ---

LA COUR: Je vous ai déjà indiqué que j'étais pas pour trancher la question de vos droits d'appel.

M. RANCOURT: Je comprends parfaitement, monsieur le juge.

LA COUR: Vous avez les -- vous avez les droits d'appel tels qu'ils sont.

Du fait il y a un doute dans mon esprit, selon moi ---

M. RANCOURT: Monsieur le juge, c'est la troisième fois que vous expliquez ce point. J'ai pas besoin de l'entendre, je veux faire mon argument.

LA COUR: O.k. Allons-y.

M. RANCOURT: Ce jugement du Juge Annis inclut une décision de votre part, monsieur le juge, sur la -- sur la question « crainte raisonnable de partialité » en plus des décisions du Juge Beaudoin.

C'est aux paragraphes 46 à 51 dans cette décision, on parle d'une de vos décisions et on a jugé que vous aviez pris une décision -- le Juge Annis a jugé que vous aviez pris une décision pour barrer ma motion pour crainte raisonnable de partialité.

Donc, je fais appel à toute cette décision-là, incluant votre décision.

La décision du Juge Annis était finale car elle ne permet pas un appel à la cour divisionnelle ni à la Cour d'Appel de l'Ontario.

La décision -- monsieur le juge, je viens d'entendre Monsieur Deardon qui a dit à haute voix:

« He's doing this on purpose. »

Ça c'est le genre d'interruption qui sont

très dérangeantes et que j'aimerais que vous lui demandiez de ne pas faire ces interruptions-là, s'il vous plaît.

MR. DEARDON: Your Honour ---

M. RANCOURT: S'il vous plaît. Et il va en faire une autre en ce moment.

MR. DEARDON: Your Honour, I was speaking to Mr. Doody who has a headset on. It wasn't intended for Mr. Rancourt to overhear what counsel were saying to each other.

And I also put on the record that he -- his voice is now raising -- has been raised at you and what he's doing here is a filibuster.

Getting his request for an adjournment has nothing to do -- and you've told him three times and he keeps yelling back at you: "Don't tell me that, I want to make my argument." so that he's going to get a point, Your Honour, where he's going to say: "I've got, like, only an hour to make my arguments on the main motion and this is procedurally wrong."

THE COURT: I'm going to give you five minutes to make your ---

M. RANCOURT: Monsieur le juge ---

LA COUR: Je vous accorde cinq minutes ---

M. RANCOURT: --- cette interruption ---

LA COUR: Non. Non, non. Non, non, c'est ---

M. RANCOURT: --- c'est inacceptable.

LA COUR: --- parfaitement -- parfaitement légitime, selon moi.

Je vous donne cinq minutes de faire votre argument pour vos représentations sur la question

d'ajournement.

M. RANCOURT: La décision ---

LA COUR: Cinq minutes. Monsieur le greffier ---

M. RANCOURT: La décision du Juge Annis ---

LA COUR: --- prends le temps.

M. RANCOURT: --- était finale.

Sur ce point, Monsieur Doody est d'accord avec moi dans son factum. Il dit que c'est une décision finale.

Toutes les questions -- voici -- voici la chose centrale: Toutes les questions qui traitaient de motifs impropres pour la maintenance et la champartie dans l'action ont été refusées. Il y avait des témoins de l'Université d'Ottawa qui incluaient Monsieur -- Monsieur Giroux, la Plaignante. Il y avait Bruce Feldthusen, le Doyen de la Faculté; il y avait Allan Rock, le Président de l'Université; il y avait Céline Delorme, une avocate.

Tous ces avocats ont refusé toutes les questions. Je pense qu'il y avait une centaine de questions qui parlaient des motifs impropres de la maintenance et de la champartie.

Ces refus ont été soutenus par le Juge Beaudoin dans ses décisions et j'ai demandé que toutes ces décisions du Juge Beaudoin soient enlevées sur la base de crainte raisonnable de partialité.

Ma demande d'une détermination judiciaire de la question « crainte raisonnable de partialité » a été refusée sur toute la ligne, à trois reprises, monsieur le juge.

5 J'ai fait une première demande pour cette détermination-là pendant la motion en cours avec le Juge Beaudoin. J'ai demandé d'ajourner pour venir amener une motion pour qu'il se récuse pour raison de crainte raisonnable de partialité. Ça c'était la première fois.

10 La deuxième fois, j'ai -- et, en plus, j'ai demandé au Juge-en-chef Hackland à plusieurs reprises de m'aider, de me diriger, de m'aider à faire cette motion-là.

15 Ensuite, j'ai posé une motion pour une détermination -- qui cherchait une détermination de crainte raisonnable de partialité devant la même Cour dans laquelle vous êtes et dans laquelle était le Juge Beaudoin et vous avez refusé d'entendre cette motion-là. Deuxième refus.

20 Et troisièmement, je suis allé en « leave to appeal » et avec le Juge Annis. Il a refusé d'entendre -- de me donner la chance de, éventuellement, obtenir une détermination sur la question « crainte raisonnable de partialité ».

25 Cette dernière demande était, effectivement, finale. Monsieur Doody, dans son factum, à la page 12 au paragraphe 31, dit que c'est une décision finale.

30 Le résultat c'est que ma demande -- le résultat -- et c'est ça qui est important -- le résultat c'est que ma demande d'une détermination judiciaire pour crainte raisonnable de partialité n'a jamais été entendue sur ses mérites devant les instances qui pouvaient la déterminer.

Ceci a un impact majeur sur l'évidence à laquelle j'ai accès pour ma motion pour champartie.

Et sur les critères de détermination de la question « maintenance et/ou champartie », ça l'a un impact sur les critères de détermination, les critères que va utiliser la Cour pour déterminer la question « maintenance et champartie ». Ça l'a un impact là-dessus aussi.

Mais plus important, monsieur le juge, c'est que cette possibilité que a la Cour -- cette Cour -- d'éviter une question, une plainte de crainte raisonnable de partialité est d'une -- est d'une importance nationale et touche l'intégrité profonde du système juridique canadien en son entier.

Le résultat d'avoir évité ou contourné une détermination juste et nécessaire de ma plainte de crainte raisonnable de partialité est fondamentale au système de justice entier et beaucoup plus important que l'action immédiate de diffamation pour un article sur un 'blog'.

Je demande, donc, un ajournement de la motion immédiate, ma motion pour champartie -- c'est ma motion -- pour me permettre de faire ma demande de permission d'appel à la Cour suprême du Canada sans que cela soit préjudiciable contre moi dans cette motion en cours de champartie qui serait, autrement -- la motion de champartie serait autrement gravement défectueuse en termes de justice procédurale et en termes d'une saine administration de la justice.

5 D'ailleurs, un coup d'œil rapide -- et ça c'est un point important, monsieur le juge -- un coup d'œil rapide aux factums des parties opposantes montre bien à quel point leurs arguments dépendent de façon centrale sur les décisions, et procédurales et de fond, -- les décisions de procédure et de fond -- du Juge Robert Beaudoin dans la motion pour champartie.

10 Vous n'avez qu'à regarder le factum de Monsieur Doody, les pages 3 à 12, les paragraphes 7 à 31. Il n'arrête pas de parler des décisions du Juge Beaudoin et de leur -- et comment il les utilise.

15 Vous reprenez ensuite le factum de Monsieur Doody, les pages 21 à 22, les paragraphes 47 à 51, il parle encore des décisions du Juge Beaudoin sur lesquelles il s'appuie pour faire ses différents arguments.

20 Ensuite, vous regardez le factum de Maître Deardon, à la page 27, au paragraphe 86 -- et si on a quelques minutes, j'aimerais qu'on regarde ça. Est-ce qu'on peut?

LA COUR: Bon, là, c'est cinq minutes ---

M. RANCOURT: Non?

25 Alors, je vais dire ceci à propos de ce paragraphe 86: Ici, cette proposition centrale dans la motion, c'est-à-dire le motif de Allan Rock, n'est pas vérifiable en justice à cause des décisions d'accès à l'évidence du Juge Beaudoin.

30 Le Juge Beaudoin, dans ses décisions, ne m'a pas permis des questions qui étaient nécessaires pour évaluer de façon juste et correcte les

motifs du Président Allan Rock pour maintenir l'action de la Plaignante. Je n'ai pas eu accès à ces -- à ces informations-là.

Et donc, vous voyez que les décisions du Juge Beaudoin ont limité complètement mon accès à l'information et à l'évidence dont j'aurais de toute justice droit et dont j'avais besoin et a aussi limité l'interprétation, le contexte dans lequel on va interpréter champartie et maintenance.

Et c'est pour ces raisons qu'on ne peut pas continuer tant que cette question de crainte raisonnable de partialité n'a pas été résolue par la Cour suprême.

LA COUR: Merci.

Now, response?

MR. DEARDON: Yes, Your Honour.

First of all, Your Honour, my letter to the Court on December the 11th, paragraph 1, that Mr. Rancourt takes issue with where I tell him that it's our position that the Supreme Court has no jurisdiction was, of course, cc'd to him.

He was fully aware of the communication and it is in response to the confirmation of motion that he served at the 11th hour on Monday morning.

Your Honour, I have in the factum, paragraph 10 -- that's Professor St. Lewis' factum -- a decision of *Skokol v. Petronix Research* (ph) where the Court held -- this is Justice Brown held that:

"The Rules of civil procedure apply equally

to parties who retain counsel and those who elect to represent themselves. Self-represented litigants are not entitled to special treatment. It is not for the Court to read into pleadings or affidavits of the self-represented parties matters that should have been included in those documents. To do so would be very unfair to the other party."

And that couples with paragraphs 2 and 3 of my December 11th letter, Your Honour, where there is special treatment that has been, to date, accorded to Mr. Rancourt.

It never satisfies him. It doesn't matter how much extra time we give him, it doesn't matter how much extra written submissions he's allowed, he still stands here and filibusters and tries to run the clock like he's doing now to argue that, somehow, he's been denied procedural fairness.

He has, Your Honour, been -- filed himself or been responsible for 24 motions in this -- in this case: 13 motions in the libel action -- I've prepared a list -- 13 motions in the libel and 11 in the champerty motion plus two of his partisan supporters, Mr. Hickey and Ms. Gervais, is an additional two interventions. He self-represented himself in all of these.

On Sunday, Your Honour, on Sunday, Mr. Rancourt e-mailed me and Mr. Doody at 4:48 p.m. to advise that he was going to rely on the Notice of Examination of Allan Rock at today's hearing and then, at 6:22 p.m., Your Honour, he -- this is on Sunday, December 9th -- he sends another e-

mail to Mr. Doody and I with the four authorities on self-reps for the purpose of this hearing here.

And then, at 10:00 o'clock that night, he faxed me 15 pages which included those two e-mails and other information and I e-mailed him back and asked him: "What is this fax for?"

And then, of course, he didn't respond, and then I e-mailed again: "What is this fax for?" and he didn't respond.

So we have him providing us evidence and law on Sunday night and then we get blind-sighted on Monday morning with his Confirmation of Motion where he says he's going to seek an adjournment. At 8:00 o'clock -- 8:12 in the morning, he serves that confirmation after, at 10:00 p.m. that night, he had served a -- he had faxed me on materials presumably pertaining to today's argument.

He hasn't filed a motion for stay, he hasn't sought leave to appeal Justice Caneson's (ph) decision in any court. Obviously, he doesn't have a Stay Order so there's no reason for this Court to adjourn this motion at all and all I was doing, Your Honour, in that paragraph -- I thought he would be happy that I've alerted him in paragraph 1 of the December 11th letter that he's in the wrong court.

Instead, he accuses me of what you heard him say but we weren't -- Mr. Doody and I were not going to sit back knowing in our -- as far as we were concerned in our reading of Justice

Rimbald's decision that he has to seek leave of a Superior Court judge to get leave to get before the Divisional Court because that's what the gatekeeper role is all about.

You can't go directly to either the Court of Appeal or the Supreme Court of Canada and avoid the gatekeeper role as to whether you've got a frivolous appeal. You can't circumvent the gatekeeper and that's where you go on an interlocutory matter.

All I'm doing is advising Mr. Rancourt of that and he bites back the way you heard him do today which, to me, is incredible.

What he's done is he's waited 10 days, Your Honour, to inform us that he was seeking an adjournment. At no time prior to Monday morning did he do that. In fact, as I said, he sent those three communications on Sunday, December 9th, to me and Mr. Doody, leaving us totally, of course, to think that we are proceeding today.

So that kind of tactic, Your Honour, is what we've always heard with him. It started back on January the 26th before Master MacLeod. You've seen the non-stop request for adjournments or arguments and preliminary matters to run the clock. We've seen that with your own experience but let's not lose sight of the fact he's had seven months to prepare for today.

And three days before he's to argue, he says he needs an adjournment and he doesn't have anything filed: no motion to stay, no leave application, nothing.

That brings the administration of justice into disrepute, in my respectful submission, Your Honour.

He's made serious serious accusations of champerty against Professor St. Lewis and the University of Ottawa. Professor St. Lewis took an oath, a barrister's oath, that she would not commit champerty and this is weighing heavily on her and ---

M. RANCOURT: Objection, monsieur le juge.

MR. DEARDON: --- he -- he cannot -- he is not entitled to an adjournment at the 11th hour like he has done.

M. RANCOURT: J'ai demandé une objection.

LA COUR: Je pense que c'est pas nécessaire d'avoir une objection.

Les objections devraient être limitées si il y a des allégations qui sont fausses ou non supportées par la preuve.

M. RANCOURT: Merci.

LA COUR: Je crois pas c'est -- que c'est le cas.

I'm saying if there's objection, it should be limited to there's a misleading or misstatement of evidence or -- to the Court. That's really the limit.

MR. DEARDON: There's no misstatement that ---

THE COURT: No, that's what I was saying so ...

MR. DEARDON: So the barrister's oath not to be in champerty ---

THE COURT: That's what I -- that's what I ---

MR. DEARDON: That my last -- I'll end like this, Your Honour, I'll sit down, is: He's had seven

months. He filed this motion in January, he was -- this was supposed to be argued August 29th.

It was his conduct that caused the cancellation of the August 29th arguments before Justice Beaudoin because he made his specious apprehension of bias accusations against Justice Beaudoin on July 24th and now, you know, three days before, he says that he needs an adjournment.

It's just -- it's just part of his pattern of delayed tactics and there's no need for adjournment and we should get on with the argument today, in my respectful submission.

Thank you, Your Honour.

M. RANCOURT: Donc, bien ---

MR. DOODY: Your Honour, just very briefly.

Mr. Rancourt has filed no leave to appeal application from the decision of Justice Annis. That decision was made on November 29th, was 14 days ago.

Had he wished to bring or file an application for leave to appeal, he could have done so.

Secondly, there is no jurisdiction in the Supreme Court of Canada. The Court of Appeal has made that very clear in the case referred to by Mr. -- cases referred to by Mr. Deardon in his letter.

The jurisdiction to the extent that there is jurisdiction to grant -- to seek appellate review of the denial of leave to appeal is -- the procedure is required pursuant to sub-section 19.1(b) of the *Court of Justice Act* to seek leave

to appeal from another judge of the Superior Court to appeal to the Divisional Court.

It's only in extraordinary circumstances that a denial of leave to appeal will be -- that leave to appeal will be granted from a denial of leave to appeal.

Thirdly, Mr. Rancourt has filled no request for a stay of Justice Annis' order. If he had filed a request for a stay, he would have had to have met the three part *RJR MacDonald* test, the first step of which is a reasonably arguable case.

In my respectful submission, there is absolutely no way that you could -- that it could be said that there is a reasonably arguable case that leave to appeal ought to be granted from Justice Annis' decisions -- decision denying leave to appeal on the basis of reasonable apprehension of bias. Mr. Rancourt has not even tried to meet that test.

Secondly, he cannot show irreparable harm. He ought to be required to proceed with this motion which is frivolous in itself and was brought last January and it's high time it was heard.

Those are my submissions.

MR. DEARDON: Your Honour, I forgot one other fact, for the record, and that is Mr. Rancourt did have time to file a motion for leave to appeal of your December 7th decision on the Gervais refusals.

He did have time to prepare that seventh, I

think it is, leave to appeal application that he's -- he's filed in this action but he's filed nothing to this Court in terms of stay or a leave application regardless of which could it would be.

M. RANCOURT: Donc, je presume que j'ai un droit de réponse?

LA COUR: Oui.

M. RANCOURT: Donc, les -- les grandes caractérisations qui sont proposées par Monsieur Deardon surtout je trouve exagérées ou outrageuses, comment est-ce que -- il dit que j'ai attendu 10 jours pour soulever la question de la Cour Suprême du Canada.

Je n'ai pas vu l'acte de la Cour Suprême du Canada avant il y a quelques -- avant, il y a quelques jours. Je suis auto-représenté, je navigue ces maintes motions. Monsieur Deardon veut me rendre responsable de tous les motions dans l'action mais il évite de dire que neuf des motions ont été des motions amenées par lui.

Une de ces motions-là amenée par Monsieur Deardon était pour me forcer d'accepter un médiateur de son choix pour la médiation mandatée.

Il a fini -- j'ai négocié avec lui, il a fini par abandonner cette motion-là avant qu'elle soit entendue mais il était prêt à aller jusqu'au bout avec une telle motion. Il a eu neuf motions de leur côté et mes motions sont pour chercher une justice procédurale et de fond. C'est la nature de mes appels.

5 Aussi, Monsieur Deardon a parlé d'un fax de 15 pages. Ce fax était -- avait exactement le même contenu qu'un document que je lui avais envoyé par courriel où il ne m'a pas répondu qu'il l'avait reçu, donc, je lui ai faxé.

10 C'est aussi si simple que ça. C'est de toute évidence. Monsieur Deardon est un homme intelligent, il savait très bien que c'était la raison de mon fax mais il a persisté à me harceler avec ces questions-là pendant que j'essayais de préparer la motion présente.

15 Et comme ça, ça continue. Il dit que j'ai eu -- Monsieur Deardon dit que j'ai eu sept mois pour préparer cette motion. Nous allons de motion en motion, nous allons de -- de menace à menace de la part de Monsieur Deardon avant -- envers moi. Je n'ai pas le temps de respirer, j'essaye juste de me garder à flot avec les règlements, avec la loi, avec les possibilités et
20 il ose dire que j'ai eu sept mois pour préparer cette motion alors que si vous regardez le calendrier, le calendrier est plein de choses incluant ses motions à lui et les miennes et des coûts et des arguments hors des -- des arguments
25 écrits de toutes sortes qui ont été demandés.

 Donc, c'est absolument loufoque de dire que j'ai eu sept mois pour préparer cette motion.

30 Et finalement, monsieur le juge, je suis très surpris par l'argument de mes -- de mes deux amis qui -- qui osent prétendre savoir que la Cour suprême du Canada n'a pas la juridiction pour entendre mon appel relatif à quelque chose

d'aussi important que se faire nier une décision juridique pour crainte raisonnable de partialité.

C'est incroyable. Quel juge d'une cour inférieure va oser dire que la Cour suprême du Canada n'a pas la juridiction pour entendre cette chose qui touche au fond tout le système juridique?

Je trouve ça vraiment surprenant des arguments comme ça.

Voilà, monsieur le juge.

--- L'audience est suspendue à 10h53

--- L'audience est reprise à 11h00

THE COURT: I'm going to give my decision in English. I've written it, it may be translated into French if the parties wish.

So Mr. Rancourt seeks an adjournment of his champerty motion. This motion was first brought in January of 2012 and extensive motions for refusals on cross-examinations over the past 11 months or so have been held.

The motion was not set -- was set to be heard in August, late August, of this year but was adjourned due to Mr. Rancourt's raising the issue of bias because Justice Beaudoin had established a bursary in memory of his late son. The date was then set for today at a case management conference before myself.

The main reason given by Mr. Rancourt for his request for an adjournment is to allow him to seek leave to appeal from Justice Annis' decision denying him leave to appeal from Justice Beaudoin's decisions and he seeks leave to appeal

to the Supreme Court of Canada.

Mr. Rancourt argues that he was denied procedural justice by Justice Beaudoin in his decisions on his refusals motion for -- he refused to allow him to ask further questions of representatives of the University of Ottawa.

He sought leave to appeal from this decision of Justice Beaudoin and was unsuccessful.

I find that the administration of justice would be brought into disrepute if a further adjournment was granted, for the following reasons: Mr. Rancourt has brought no application for leave to appeal and I also find, as I've advised Mr. Rancourt on at least three occasions, that the likelihood of him being granted leave to appeal to the Supreme Court of Canada is very unlikely.

Second, there's no application for a stay pending Mr. Rancourt's further appeal.

Thirdly, the section of the *Supreme Court Act* relied on by Mr. Rancourt, which is section 40(1), permits an appeal with leave from the Supreme Court of Canada from a final order of the Federal Court of Appeal or at the highest court of final resort in a province.

The highest court in the province of Ontario where we are located is the Ontario Court of Appeal and Justice Annis is a judge of the Superior Court and not of the Ontario Court of Appeal.

So it's very unlikely that that section would be applicable.

5 And finally, the parties are prepared and have filed all their factums and documents which are before me and I also find that there would be no denial of procedural fairness to have this motion argued as it has been set and has been pending for some 12 -- 11 or 12 months.

So the motion for an adjournment is dismissed.

10 **M. RANCOURT:** Monsieur le juge, est-ce vous me permettez de signaler peut-être des erreurs factuelles dans ce que vous avez dit?

LA COUR: Non. Non.

Procédez.

15 **M. RANCOURT:** La prochaine question c'est, si on veut, ma motion pour que cette motion soit amenée à procès.

20 **LA COUR:** Et ça, ça va être une partie de votre -- vos représentations dans votre motion. Mais je veux pas entendre -- au tout, c'est pas une matière préliminaire.

Donc, selon vous, ça devrait être un procès pour déterminer une question. Je vais vous entendre ---

25 **M. RANCOURT:** Oui.

LA COUR: --- mais ça c'est -- ça fait partie de votre représentation.

M. RANCOURT: Donc, vous voulez que -- entendre ça au début -- au début de la motion comme telle.

LA COUR: Au début et à la fin.

30 **M. RANCOURT:** Parce que ce que je vais -- non, ça peut pas être à la fin parce que je demande ---

LA COUR: Oui.

M. RANCOURT: --- que la motion ne soit pas faite sous cette forme sur papier ---

LA COUR: Oui.

M. RANCOURT: --- mais qu'elle soit faite sous forme procès.

LA COUR: O.k.

M. RANCOURT: Donc, c'est évident que cette question doit être entendue en premier.

LA COUR: Ça c'est à vous. Ça c'est à vous. Je suis pas pour rendre une décision sur ces questions préliminaires avant d'entendre la motion.

Je vais prendre cet argument en délibéré avec toute fort probable cette motion.

Donc, ça fait partie de un de vos arguments. On devrait pas le faire de cette manière comme vous l'avez faite. C'est votre motion mais, selon vous, c'est une erreur, que vous avez pris la mauvaise approche.

Donc, ça fait un an que ça traîne cette motion et, selon vous, vous avez fait les mauvaises démarches. Mais ça, ça fait partie un de vos arguments.

M. RANCOURT: Non, non.

LA COUR: Non, non, non, je suis pas pour donner une décision sur ces questions-là mais ça compte dans votre temps pour votre -- votre motion.

M. RANCOURT: O.k., je veux juste -- là, j'ai besoin d'un peu de clarification. Je veux m'assurer que vous me comprenez et que je vous comprends.

LA COUR: Oui.

M. RANCOURT: Alors ---

LA COUR: Allons-y, c'est ça j'essaye de vous dire.

M. RANCOURT: Oui, oui, oui.

LA COUR: Procédez avec votre motion.

M. RANCOURT: Je comprends ce que vous voulez dire mais je veux d'abord comprendre cette question par rapport à un procès parce que il y a une règle dans les Règles de procédures qui est claire ---

LA COUR: C'est un de vos -- c'est un de vos arguments, je vais prendre ça en délibéré.

M. RANCOURT: Ce que vous dites ---

LA COUR: Avec toutes les autres.

M. RANCOURT: Je veux bien comprendre. Ce que vous dites c'est que vous ne voulez pas prendre une décision d'aller en procès avant d'avoir entendu la motion telle que prévue initialement.

LA COUR: Toute -- toute, la motion ---

M. RANCOURT: Oui?

LA COUR: --- puis, selon vous, ça devrait pas être une motion. La motion vous avez portée, si j'ai compris, là vous -- maintenant, vous dites que ça devrait pas être une motion, ça devrait être un procès; c'est ça?

M. RANCOURT: Cette -- oui, il y a une règle qui permet que la -- qu'une motion ---

LA COUR: Donc, je vais vous entendre -- je vais vous entendre.

M. RANCOURT: Oui. Merci, alors je passe à cet argument. Oui.

LA COUR: Ça fait partie -- oui, ça fait partie

de votre motion.

M. RANCOURT: Oui.

LA COUR: Alors, il reste une heure et demie.

M. RANCOURT: Donc, je vais faire ces arguments-là et ces arguments, de toute façon, si vous choisissez de ne pas -- de refuser ce que je demande ---

LA COUR: Oui?

M. RANCOURT: --- les arguments sont applicables directement à la motion principale.

LA COUR: Oui, c'est ça. Exactement.

M. RANCOURT: Donc, c'est logique que je fasse ça d'abord; d'accord?

LA COUR: C'est à vous, oui.

M. RANCOURT: Merci.

Alors, je vais -- je vais faire ça.

(COURTE PAUSE)

M. RANCOURT: Alors, je veux d'abord parler du contexte légal précis dans lequel je demande qu'un issue ou une question soit portée en procès.

Prenons -- donc, c'est juste une courte introduction là mais si je prends le factum de l'Université d'Ottawa, le factum de Monsieur Doody, et je vais à la page 27 de ce factum, le paragraphe 64.

Alors, Monsieur Doody a titré ce paragraphe ou cette section-là:

« An action can only be stayed for champerty and maintenance where it is trafficking in litigation. »

Est-ce que vous avez le factum, monsieur le

juge?

LA COUR: Ça, c'est le factum de l'Université d'Ottawa?

M. RANCOURT: Oui.

De Monsieur Doody de l'Université d'Ottawa.

LA COUR: Quel -- quel paragraphe?

M. RANCOURT: Je suis à la page 27, au paragraphe 64.

LA COUR: Oui.

M. RANCOURT: O.k.?

Et Monsieur Doody dit:

« Although champerty and maintenance cannot by themselves be the basis of a finding of abuse of process, an action can be stayed where the torts are present and, in addition, the action is one in which there has been "trafficking in litigation" that is "an unjustified buying and selling of rights to litigation" where the purchaser has no proper reason to be concerned with the litigation."

Ça c'est la position de Monsieur Doody et de Monsieur Deardon mais je tiens à vous signaler que c'est la position légale de mes adversaires que je dois prouver une telle chose. Ils tiennent que je dois prouver qu'il y a « trafficking in litigation ».

Le factum de Monsieur Deardon dit la même chose.

Mais prenons deux autorités que cite Monsieur Doody et on voit très clairement que ce n'est pas le cas. En fait, les autorités que cite Monsieur Doody contredisent Monsieur Doody.

Alors, il cite, par exemple, *Operations One Inc. V. Phillips, 2004* qui était fait avec le Juge Cullity.

Alors, je vais prendre mon livre des autorités -- mon livre des autorités et je vais aller à l'onglet 2.

Et là, je vais à la page -- j'attends que vous trouviez mon livre des autorités.

LA COUR: O.k.

M. RANCOURT: Je suis à l'onglet 2 de ce livre des autorités et je vais à la page 14.

C'est très important alors je vais -- je vais -- c'est central à toute l'action alors je vais le signaler très clairement. Je commence au paragraphe 45.

Alors, le Juge Cullity dit:

"The question has been considered in at least three decisions of the Court of Appeal in England since the decision of Martell was cited ...

In each case ..."

Je lis au paragraphe 45:

"In each of these cases it was accepted that litigation pursuant to a champertous agreement could, but would not necessarily, constitute an abuse of process. In each of them, the court declined to find that the agreements, if champertous, would be abusive. The previous authorities were reviewed at some length in the last of the above decisions where the delivering -- where in delivering the judgment of the court, Morrit

L.J. stated ..."

Et là, je vais lire -- je descends au deuxième paragraphe de cette citation qui commence avec:

« As Chadwick said in Faryab ... »

Et voici, ça c'est important:

« ... the question whether the court's process is affected or threatened by an agreement for the division of spoils is one to be considered in the light of the facts in each case."

Et le prochain paragraphe est très important:

« Abuse of the Court's process can take many forms and may -- may include a combination of two or more strand which might not result in a stay."

Ça c'est important parce que ça définit comment on peut déterminer une question d'abus de processus, qu'il faut regarder le tout et que les différentes composantes peuvent interagir.

Et je continue dans ce même paragraphe, à la page 15, à la fin du paragraphe, ça dit:

« ... 'Wanton and officious intermeddling with the disputes of others in which they [the funders] have no interest and where that assistance is without justification or excuse' may be a form of trafficking in litigation. ..."

Alors, il est en train de définir que qu'est-ce que ça peut vouloir dire « trafficking in litigation ». Ça c'est très très important.

« ... 'Wanton and officious intermeddling with

the disputes of others in which they [the funders] have no interest and where that assistance is without justification or excuse' may be a form of trafficking in litigation. ..."

Donc, ça c'est la -- la définition. Il y a trois cours d'appel en Angleterre, il y a un juge canadien qui le cite, voilà la définition la définition de « trafficking » -- une définition de « trafficking litigation » qu'on peut utiliser.

« A large ... »

Ensuite, il continue:

« A large mathematical disproportion between any pre-existing financial interest and the potential profit of funders may in particular cases contribute to a finding of abuse but is not bound to do so."

et cetera, il donne des exemples.

Au prochain paragraphe, il cite la Cour d'Appel de l'Ontario, au paragraphe 46 et quand -- dans le paragraphe où il cite cela, au milieu du paragraphe, il dit:

« The protection afforded by the common law is advanced by looking to the propriety of the motives of those who become involved in litigation. By examining motives, one can more readily separate abusive practices from those that are justified or even beneficial to the proper administration of justice."

Il dit que c'est une question il faut examiner en détail les motifs.

5 Ensuite -- et ça, c'est le paragraphe 47, le prochain, ça c'est le seul paragraphe -- c'est le paragraphe, plutôt, que Monsieur Doody cite. Et on voit, à la fin de ce paragraphe, on dit -- il dit à la fin du paragraphe:

10 " ... 'an unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation" - may constitute an abuse of process while champerty that fell short of this would not."

Il dit "may ... while it would not...":

15 "It is implicit in this conclusion that a refusal to recognize champerty as a defence to a champertously-maintained action is not inconsistent with a finding that, in some circumstances, the action might be stayed as an abuse of process."

20 Alors, vous voyez, ça c'est la phrase que Monsieur Doody cite et que Monsieur Deardon utilise où on parle de « trafficking in litigation ».

25 Et vous voyez maintenant le contexte dans lequel on a pris cette phrase-là, c'est un contexte où le juge dit que:

30 « ... 'Wanton and officious intermeddling with the disputes of others in which they [the funders] have no interest and where that assistance is without justification or excuse' may be a form of trafficking in litigation. ..."

Donc, il définit que c'est le -- il faut regarder

toutes les données. Il faut se poser la question sur les motifs et il faut essayer de décider s'il y a un abus sur cette base-là. On ne peut pas énoncer une règle comme ont fait mes deux amis, une règle comme ça, que si c'est pas du « trafficking » -- ils diraient en anglais du « outright trafficking in litigation » que si c'est pas ça, alors, il y a pas de problème. C'est faux.

C'est faux. Il faut regarder si c'est un abus de processus en se basant sur toute cette question-là. Ça c'est le contexte légal réel qui s'applique ici.

Or, la décision en question que je lisais -- merci beaucoup de me le signaler -- ça c'est la décision: *Operations One Inc. V. Phillips*. C'est une décision de 2004.

Ensuite, passons maintenant à la deuxième autorité que Monsieur Doody cite où il appuie encore cette même position. Et là, je vais à *Adi v. Datta, 2011*, très récent. Je passe à l'onglet 5 -- l'onglet 5 de mon livre des autorités.

Alors, Monsieur Doody nous signale les paragraphes 53 et 54 de décision. Alors, je veux -- je veux lire ces paragraphes-là parce qu'ils sont très très importants.

Alors, les paragraphes 53 et 54:

« Officious intermeddling in another's lawsuit by assisting one of the parties to prosecute or defend the claim is the tort of maintenance: ... »

Il cite et, ensuite, il dit:

« Champerty is a form of maintenance that adds the ingredient that there is an agreement to give the intermeddler a share of the proceeds or some other profit from the subject matter of the action: ...»

Il y a un "or" ici, ça n'a pas besoin d'être de l'argent directement versé envers la personne qui maintient. Il y a d'autres possibilités:

« ... or some other profit from the subject of the matter in action: ...»

Ensuite, on continue:

"An action that involves maintenance or champerty ..."

Il y a un "or". Ça peut être de la maintenance:

« ... or champerty may be dismissed as an abuse of process: ...»

Donc, c'est faux de dire qu'il faut les deux. La maintenance seule peut être un abus de processus. Ça dépend des circonstances, ça dépend des motifs surtout.

LA COUR: Non, je pense qu'il n'y a pas de question. Maintenance seule peut être un abus de procès.

M. RANCOURT: Merci, monsieur le juge.

Et ensuite, le ---

LA COUR: J'ai des arguments au contraire?

« Champartie » c'est juste une sous -- sous-catégorie, mettons, de ---

M. RANCOURT: Merci.

LA COUR: --- de l'analyse.

M. RANCOURT: Merci, monsieur le juge.

Et, ensuite, au paragraphe 54, c'est très

important:

« In Morden and Perell,..."

Alors, il dit:

" ... I discuss the nature of champerty and maintenance as follows: ..."

et si on va en bas de sa citation, il dit:

« The objection to the assistance is that the person providing it is doing so without a proper purpose and is acting maliciously or to stir up strife. If there is an allegation of maintenance, the court must carefully examine the conduct of the parties and the propriety of the motive of the alleged maintainer: ..."

Ça ce sont -- ça c'est le contexte légal important.

Mes amis vont vouloir vous convaincre que la seule façon qu'il y a un abus de processus c'est avec champartie et si c'est du « trafficking in litigation » à leur sens très précis qui est une restriction qui n'est pas valide en loi.

Vous allez examiner -- vous allez être amené à examiner en détail les motifs pour cette maintenance de sorte à déterminer le degré d'abus de processus pour mettre fin à l'action ou non.

Mais les parties ont des positions à l'extrême l'une de l'autre vis-à-vis des motifs. Nous ne sommes pas d'accord sur les motifs c'est pour ça qu'il y a une question centrale de crédibilité où les évidences sont contraires l'une à l'autre. C'est pour ça que cette question doit aller en procès.

C'est pour ça que vous devez voir les témoins

donner leur évidence. Il faut aller en procès parce que il y a des informations en conflit et une question de crédibilité centrale.

C'est pour cette raison que certaines questions clés ou la motion toute entière doivent aller en procès et les règles qui s'appliquent, monsieur le juge, c'est la règle 37.13(2)(b) et 37.13(3) et j'ai amené ici les règles -- ah oui, ils sont dans mon -- les règles en question sont dans mon livres des autorités. Je crois que c'est l'onglet 26. Si vous allez à l'onglet 26 de mon livre des autorités et vous tournez un peu les pages, vous allez rapidement trouver la règle 37.13(2) qui dit:

« A judge who hears a motion may ... »

C'est à vous de décider:

« A judge who hears a motion may ... »

Et la section (b):

"Order the trial of an issue with such directions as are just and adjourn the motion to be disposed of by the trial judge ..."

c'est-à-dire le juge -- ça peut être vous-même -- qui traiterait de la question.

Et puis, 37.13(3) dit:

« Where on a motion a judge directs the trial of an issue, sub rules 38.10(2) and (3), issue treated as action apply with necessary modifications."

Et si vous tournez la page, vous avez la règle 38.10, justement, et 38.10(2) dit:

« Where a trial of the whole application ... »

donc, ça peut être motion parce que ils ont dit

on peut ajuster le texte:

« Where a trial of the whole motion is directed, the proceedings shall thereafter be treated as an action subject to the directions in the order of directing -- in the order directing the trial. »

Et 38.10(3) dit:

“Where a trial of an issue in the application ...”

dans ce cas-ci:

“... motion is directed, the order directing the trial may provide that the proceeding be treated as an action in respect of the issue to be tried subject to any directions in the order and shall provide that the application or motion be adjourned to be disposed of by the trial judge.”

Ça c’est la règle sur laquelle je dépens, monsieur le juge.

Je fais cette demande dans une motion d’abus de processus qui pourrait mettre fin à une action de \$1 million. Ce serait une décision finale. Cette motion serait une décision finale qui peut aller en appel à la Cour d’Appel. Ce n’est pas une simple question procédurale comme la majorité des motions.

Et maintenant, je veux parler des questions qui doivent aller en procès. Je veux parler de la première question qui est le motif de Monsieur Rock.

Nous avons lu les règlements. Il ne s’agit pas, comme le prétend Monsieur Deardon, de

retarder la question jusqu'au procès final de l'action. Vous avez vu dans les règles on peut faire un procès sans jury sur des questions clés qui parlent -- qui adressent les problèmes de crédibilité.

C'est ça que je propose mais bien de faire ce processus-là sans jury.

Je porte votre attention sur deux autorités qui discutent l'application de ces règles. C'est des autorités très importantes.

Alors, la première, c'est à l'onglet 11 de mon livre d'autorités et c'est l'autorité *Roach v. Pinnock, 2004*. Et je vous amène à la page -- au paragraphe 71 dans cette autorité et là c'est juste pour vous signaler la phrase ici, dans le paragraphe 71 de cette autorité. C'est à la page 10 de l'autorité.

La première phrase dit:

« In view of the conflicting evidence, there is a genuine issue as to whether ... »
et cetera, le cas précis. Donc, « conflicting evidence » c'est une clé.

Et, ensuite, on passe au paragraphe 111, à la page 17 de cette même autorité. Donc, je vais à la page 17 de la même autorité, au paragraphe 111.

Est-ce que vous y êtes, monsieur le juge?

LA COUR: Oui.

M. RANCOURT: Oui? O.k.

Alors, là, c'est très important. Ça dit la chose suivante:

« As noted above, Rule 37.13(2)(b) provides

that a judge who hears a motion may order the trial of an issue. »

Après ça, 112:

"For reasons given above and based on the authority of the Court as set above, there should be a trial of an issue as to whether ... was a client of the solicitor ..." et cetera

"... no further action should be taken pursuant to the praecipe order with respect to the assessment of the account in that matter against Pinnock until the issue of whether she was a client is determined. The solicitor should have the responsibility to bring the motion."

Et le prochain paragraphe:

"On the motion, the solicitor should bear the onus ..."

et cetera.

et la dernière phrase:

"... particularly where, as here, the alleged client has shown that there is a genuine issue for trial in this regard."

Alors, ce que je suis en train de vous signaler en lisant ces trois paragraphes, monsieur le juge ---

LA COUR: Vous avez -- c'est votre motion ici. C'est votre motion.

M. RANCOURT: Oui, c'est ma motion et ---

LA COUR: C'est votre motion, donc, c'est -- puis c'est selon quelle règle que vous avez apporté cette motion?

Vous avez apporté ça selon la règle 37; c'est ça?

M. RANCOURT: Peut-être, oui. Je sais pas.

LA COUR: 37.12.1(1). Non, ça c'est juste ---

M. RANCOURT: Je n'ai pas les règles en tête, monsieur le juge.

LA COUR: Vous l'avez spécifié, 21.01(3)(d). Ça c'est la règle sur laquelle que vous avez basé votre motion.

J'ai votre motion ici et donc ---

M. RANCOURT: Oui.

Oui, j'ai suivi les règles en -- en soumettant la motion.

LA COUR: Oui.

M. RANCOURT: Mon point est que vous avez la juridiction pour utiliser la règle 37 -- 37(10) ou plutôt 37.13 -- 37.13, oui, que je viens de vous citer et là, avec cette autorité, je vous -- je suis en train de vous montrer un exemple comment un juge a utilisé cette règle-là.

En autres mots, il dit: Bon, bien, là, il y a une question de -- il y a un problème, il y a un « genuine issue », il y a un problème de crédibilité, il y a un problème d'évidence qui est en conflit et, donc, on va procéder comme suit: on va régler ça par « trial », on va arrêter tout jusqu'à temps qu'on détermine cette question-là.

C'est un exemple. Vous voyez, monsieur le juge?

LA COUR: Oui,

Non, non, j'ai -- je suis au courant de cette

-- cette pouvoir.

M. RANCOURT: O.k.

LA COUR: Mais là, la question de crédibilité, est-ce qu'il y a une question de crédibilité qui est en dispute?

M. RANCOURT: Oui, et je vais -- j'y arrive. J'y arrive.

Là, je donne juste le contexte légal pour l'instant.

LA COUR: Oui, très bien.

M. RANCOURT: Et donc, une autre autorité c'est à l'onglet 12, le prochain onglet, et ça c'est l'autorité *1196303 Ontario Incorporated v. ---*

LA COUR: Sur la crédibilité, est-ce que le Président Rock n'a pas admis qu'il payait les frais juridiques de Madame -- Professeure St. Lewis?

M. RANCOURT: O.k., donc, vous voulez -- vous voulez -- vous voulez accélérer ma présentation, si je comprends bien. O.k.

Donc, je -- vous êtes d'accord que -- que vous avez ce pouvoir. O.k., donc ---

LA COUR: La crédibilité ---

M. RANCOURT: Donc, ---

LA COUR: Excusez, là je parle -- là, je parle, il faut attendre que je complète qu'est-ce que je suis après en train de dire.

M. RANCOURT: Excusez-moi, monsieur le juge.

LA COUR: Sinon, ça ne marche pas bien.

Là, je -- donc, la question de crédibilité, est-ce que c'est pas admis par le Président Rock que, oui, il paie les frais juridiques de

Professeure St. Lewis? Je ---

M. RANCOURT: Ce n'est pas une question ---

LA COUR: C'est pas contesté.

M. RANCOURT: Ce n'est pas contesté que l'Université paie les frais. C'est -- ça c'est un point qui n'est pas contesté.

LA COUR: Donc, c'était pas une question de crédibilité.

M. RANCOURT: Ce point-là n'est pas contesté, monsieur le juge. Il y a d'autres points qui sont centraux, qui sont très contestés et c'est ça que je vais passer en revue avec vous.

Donc, l'autorité -- le paragraphe 14 que je voulais vous signaler c'est pas nécessaire parce que vous comprenez le ---

LA COUR: Oui, oui.

M. RANCOURT: --- la façon -- d'accord. Merci.

Alors, je lâche ça et, maintenant, je passe à la question, justement, de crédibilité.

Alors, la question centrale et qui est déterminant pour la motion c'est les motifs de Allan Rock pour maintenir l'action de la plaignante. C'est là où il y a un grand désaccord et des conflits dans les évidences. Les motifs de Allan Rock.

LA COUR: Mais est-ce qu'il a pas admis qu'il payait ses frais parce que le Professeure St. Lewis avait fait le rapport comme employée de l'université?

M. RANCOURT: Il a avancé, lui, ses motifs ---

LA COUR: Oui.

M. RANCOURT: --- et, moi, je dis que ses motifs

ne sont pas ceux qu'il a avancés. Donc, il y a un conflit entre l'évidence sur papier et la position des deux parties à propos des motifs du Président Allan Rock pour maintenir l'action de la plaignante.

Et c'est ce que je vais vous expliquer. Je vais vous montrer les conflits dans l'évidence; o.k.?

Ici, nous avons -- nous avons le témoignage, effectivement, un serment de Monsieur Rock qui avance que -- que des motifs propres. Il dit -- il dit qu'il a que des bons motifs en contraste avec des preuves documentaires de ses sentiments, de ses opinions très négatifs à mon égard.

Alors, nous parlons de la crédibilité de l'évidence de Monsieur Rock. Monsieur Rock qui est le Président de l'Université d'Ottawa, Monsieur Rock qui est l'ancien Ministre fédéral de la justice, Monsieur Rock qui est un ancien Ambassadeur du Canada aux Nations Unies, nous parlons de la crédibilité de son évidence et tout son ego devant la loi.

Alors, je vais demander, monsieur le juge, que vous voyez son témoignage pour pouvoir juger de la crédibilité de ce témoignage.

Voici donc un exemple de conflit dans les faits concernant Monsieur Rock. Je vous amène au procès-verbal de l'examination hors cours de Monsieur Rock tenu le 18 avril 2012 et on doit aller à mon -- à mon -- à mes documents, à l'onglet 16 au 33. On l'appelle en anglais le « Motion Record ». Je pense que j'apprendrai

jamais le mot français pour ça.

Et donc, nous allons à l'onglet 16. L'onglet 16 c'est le procès-verbal de l'examination de Monsieur Rock et je vais aller à la page 99 -- oui, 99 de cette ---

MR. DEARDON: Is that page 99 of the record or of the transcript?

M. RANCOURT: Attendez, je m'oriente un peu là.

Oui, donc, c'est la page 99 du 'transcript', du procès-verbal.

MR. DEARDON: Okay.

M. RANCOURT: Et donc, c'est la page 104 du 'Motion Record' dans le tome 3. O.k.?

MR. DEARDON: Merci.

M. RANCOURT: Et je vais lire les lignes 9 à 22.

Alors, il donne une réponse:

« The motive was exactly as I have described it. It had nothing to do with any scholarship fund, nothing to do with what you said about me. I have no idea what you said about me. I haven't read your blog posts ...»

au pluriel:

«... and I have no intention of doing so.»

Ensuite, je pose la question:

« You testified that you read it in the Statement of Claim, Mr. Rock. You have read it. It is entirely in the Statement of Claim.»

Il dit:

«Oh, you are referring to the statement in the Statement of Claim. That means nothing to me, Mr. Rancourt. It is the content of

the blog posts and it is identified as such.”
Et ensuite, il dit:

“What you said about me has no effect on me.”

Donc, voilà son témoignage et je mets ça en
contraste avec l'exhibit numéro 1 que Monsieur
Rock lui-même a identifié pendant son témoignage
et les les exhibits -- l'exhibit numéro 1 est à
l'onglet 21. Donc, là, il faut sortir le tome 4

LA COUR: Mais là, il a continué. Il a dit:

« This lawsuit is all about the effect on
Professor St. Lewis and what you said about
her.”

M. RANCOURT: Oui, c'est sa position.

LA COUR: O.k.

M. RANCOURT: Oui, c'est sa position.

Je suis en train de dire que sa position et
son témoignage sont en conflit avec ma position
et avec les documents que je vais lui montrer;
d'accord?

Et donc, à l'onglet 21, au tome 4 -- donc,
l'onglet 21, au tome 4 -- est-ce que vous êtes à
l'onglet ---

LA COUR: Oui, 21?

M. RANCOURT: Vingt et un (21).

LA COUR: Tome 4.

M. RANCOURT: Vous voyez que ce sont les
« Exhibits at cross-examination of affient, Allan
Rock »? Vous voyez ça, la page titre?

Est-ce que vous êtes dans le tome 4, monsieur
le juge?

LA COUR: Tome 4, oui.

Quelle page?

M. RANCOURT: Et est-ce que vous êtes au -- à l'onglet 21?

LA COUR: Oui.

Quelle page?

M. RANCOURT: C'est la page 119 du 'Motion Record'.

LA COUR: Cent dix-neuf (119)?

M. RANCOURT: Oui. En gros caractères grands, en haut de la page, ça dit: « Volume 4, page 119 ».

LA COUR: Ça c'est la première page?

M. RANCOURT: Oui, c'est la première page.

LA COUR: Oui, oui.

M. RANCOURT: Donc, ça c'est une collection des exhibits; n'est-ce pas?

Et là, je vais à la page 126 du 'Motion Record' et il y a un ---

LA COUR: Est-ce que c'est dans les affidavits qui sont contestés?

M. RANCOURT: Non. Ça c'est un exhibit ---

LA COUR: Non, ça c'est une -- ça c'est un des affidavits, ça.

M. RANCOURT: Monsieur le juge ---

LA COUR: Oui.

M. RANCOURT: --- pour être clair ---

LA COUR: Oui.

M. RANCOURT: --- ça c'est un exhibit qui a été identifié par Monsieur Rock pendant son examination.

LA COUR: O.k.

M. RANCOURT: O.k.?

Et vous voyez le numéro d'exhibit en bas de

la page à la page 126 du 'Motion Record'.

LA COUR: O.k.

M. RANCOURT: Est-ce que vous y êtes?

LA COUR: Pas encore.

Cent vingt-six (126)?

M. RANCOURT: Cent vingt-six (126) du 'Motion Record'.

LA COUR: O.k.

M. RANCOURT: Est-ce que vous y êtes?

LA COUR: Oui. Oui.

M. RANCOURT: O.k.

Il y a un « 187 » en haut de la page. Vous voyez ça?

LA COUR: Oui.

M. RANCOURT: O.k.

C'est un courriel que Monsieur Rock a identifié. Monsieur Rock vient de dire qu'il ne lit jamais mes 'blog posts' -- au pluriel -- que ça a aucun effet sur lui et, dans ce courriel, il envoie un courriel à Andrée Dumulon qui est la Chef des relations médiatiques à l'Université d'Ottawa et il dit:

« I need your advice ... »

et cetera:

"... is there any purpose to be served by responding to a letter to the Editor of this and any other publications that pick up Rancourt's toxic rants or are we better just to leave it alone?"

Donc, il parle des 'toxic rants'. Il caractérise mes articles blog comme des 'toxic rants'. Je pense que ça montre une certaine --

un certain sentiment à mon égard.

Ensuite, ---

MR. DOODY: Well, just a -- Your Honour, I rise because my friend completely misconstrues the -- the evidence.

Mr. Rock writes:

"I need your advice about this. Is there any purpose to be served by responding to a letter to the Editor of this and any other publications that pick up Rancourt's toxic rants or are we better just to leave it alone?"

Underneath the e-mail, about which obviously Mr. Rock was seeking advice, is a reference to an article called "Rancourt firing by U of Ottawa" which appeared in the Pacific Free Press which I understand to be a newspaper published on paper and that is certainly confirmed by Mr. Rock's question as to whether he ought to respond by a letter to the Editor of this or other publications.

This does not talk about blogs.

M. RANCOURT: Au contraire, monsieur le juge, cet article cite mes -- ce que Monsieur Rock appelle mes 'toxic rants'. Je n'ai jamais écrit un article pour le Pacific Free Press et cette objection ---

LA COUR: Mais ça fait référence à cet article. Il répond -- et sa question est reliée ---

M. RANCOURT: Oui, il fait référence à l'article mais il parle de mes écrits qui ne sont pas -- c'est pas moi qui a écrit cet article-là et mes

seuls écrits qu'il critique sont sur mon blog,
« U of O Watch ».

Et donc, il parle de ces ---

MR. DOODY: Your Honour ---

LA COUR: Non, je sais pas si on peut faire cette
-- cette extension parce qu'on parle de --
journaux, le Pacific Free Press.

He's talking about the Pacific Free Press and
an article about your -- about -- à propos de
votre emploi qui était terminé à l'Université
d'Ottawa. C'était ça le sujet ici.

M. RANCOURT: Et il mentionne mes 'toxic rants',
donc, il s'agit de mes écrits, monsieur le juge.

MR. DEARDON: Your Honour, if Mr. Rancourt had
chosen to put that article into evidence, we
might know.

I could hypothesize that Mr. Rancourt might
have been quoted in that article. It might have
said something characterized as a "toxic rant"
but I don't know nor does Mr. Rancourt nor does
the Court because it's not in evidence.

M. RANCOURT: D'accord, passons au prochain -- au
prochain point.

LA COUR: Donc, on va prendre une pause -- on va
prendre une pause de 10 minutes. We're going to
try to keep to the time. On va tenir au horaire.

So we'll take 10 minutes.

THE REGISTRAR: All rise. Levez-vous.

--- Upon recessing at 11:40 a.m.

--- Upon resuming at 11:54 a.m.

THE REGISTRAR: The Court is reconvened. Please
be seated.

LA COUR: Monsieur Rancourt.

M. RANCOURT: Alors, monsieur le juge, j'étais en train de faire mon argument pour amener cette motion en procès et je suis en train de signaler que il y a des évidences qui sont contestées puis il y a des questions de crédibilité centrales autour de Monsieur Rock et donc, je vais passer à un deuxième exemple d'un tel document.

On était, juste tout à l'heure, là, dans le tome 3 de mon dossier de motions. J'ai appris le terme français grâce à l'interprète. Donc, c'est le tome 4; le tome 4 du dossier de motions.

LA COUR: Oui.

M. RANCOURT: Et on était à l'onglet 21.

LA COUR: Oui.

M. RANCOURT: Et maintenant, je vais passer à la page 128 du tome 4.

LA COUR: Et 183?

M. RANCOURT: Oui, exact. O.k.

En fait, c'est une chaîne de courriels qu'on va examiner ensemble parce que c'est très important. C'est important pour la motion toute entière, pas juste pour mon argument de procès.

Et si vous tournez la page, vous allez voir que la chaîne, chronologiquement, commence à la deuxième page, à la prochaine page, à la page 129; vous voyez?

La raison que il y a des choses qui sont noircies, monsieur le juge, c'est que ce document a été obtenu par une demande d'accès à l'information de la *Loi d'accès à l'information de l'Ontario* par moi-même et, donc, on a le droit

dans l'accès à l'information de bloquer certaines informations personnelles de tierces personnes.

LA COUR: Mais c'est dans cet article disant que vous êtes terminé à cause que vous êtes pas d'accord -- à cause du:

« ... Isreali lobby, does not agree with his views on the occupation of Palestine ... »

c'est ça?

M. RANCOURT: Oui, là, on parle de cette page-là, oui.

LA COUR:

« ... neither does Allan Rock ... »

C'est ça? Cette page-là?

M. RANCOURT: Oui, on va -- je veux vous amener à travers ce document qui est un échange ---

LA COUR: Parce que ça ça s'éloigne -- ça s'éloigne du -- toute ---

M. RANCOURT: Mais, monsieur le juge ---

LA COUR: Là, on est ---

M. RANCOURT: Donnez-moi la chance ---

LA COUR: Oui.

M. RANCOURT: --- de faire mon argument ---

LA COUR: Oui.

M. RANCOURT: --- monsieur le juge.

LA COUR: Oui, oui.

M. RANCOURT: C'est un document central ---

LA COUR: Je peux pas toute régler ici dans cette ---

M. RANCOURT: Non, je vous demande pas -- monsieur le juge, soyons clairs.

LA COUR: Oui.

M. RANCOURT: Je ne vous demande pas de régler la

question du conflit Palestine/Israël.

LA COUR: C'est ça.

M. RANCOURT: Je vous l'assure.

LA COUR: C'est hors -- hors de mes ---

M. RANCOURT: Je vous l'assure; o.k.?

LA COUR: --- mes compétences.

M. RANCOURT: Je me tiens uniquement sur la question de crédibilité des motifs de Monsieur Rock; o.k.? Et je ne vais pas toucher à -- au conflit.

Mais c'est un -- un échange de cinq courriels. Il y a cinq courriels dans cet échange et je veux vous montrer la chaîne de ces courriels-là parce que c'est central.

Alors, je commence à la fin parce que, en ordre chronologique, c'était le premier. Alors, je commence à la page que vous m'avez signalée; o.k.? Il y a quelqu'un qui a envoyé une information qui dit justement ce que vous avez lu:

« University of Ottawa fired Dr. Rancourt after 23 years of impeccable pedagogic career because the Israel lobby does not agree with his views on the Israeli occupation of Palestine, apparently neither does Allan Rock ... »

et quelqu'un a écrit ça et l'a envoyé à quelqu'un. Je sais pas qui parce que c'est noirci.

Mais vous voyez ce message est attaché à un message de Bruce Feldthusen à Allan Rock, deux protagonistes importants dans la motion qui est

devant nous.

Alors, vous voyez à la page -- à la première page, tout en bas, il y a un courriel qui est envoyé de Bruce Feldthusen à Allan Rock le 18 avril 2009 à 5h30 p.m. Vous voyez ça?

LA COUR: Oui.

M. RANCOURT: Alors, ça c'est le premier courriel et vous voyez que Monsieur Feldthusen est en train d'envoyer en attachement ce qu'on vient de lire à propos de la Palestine; n'est-ce pas?

LA COUR: Oui.

M. RANCOURT: Il envoie ça à Monsieur Rock.

Monsieur Rock, prochain courriel -- donc, si vous voulez, c'est la troisième communication. Il y a une première communication de la personne non-identifiée, une deuxième communication de Bruce Feldthusen à Allan Rock et, ensuite, la troisième c'est un courriel de monsieur Allan Rock à Bruce Feldthusen le 19 avril 2009 à 10h38 a.m. et Monsieur Rock dit:

« Bruce, do we know -- do we know ...»

“ Who ...”

excusez moi:

“Who do we know that can circulate a response to this fiction? It is important for the members of the community to know that: (1) far from having had an impeccable pedagogical career, Rancourt has spent the last several years undermining pedagogy, denying students access to an education and engaging in a cynical mockery of the whole education process and (2) Rancourt is trafficking in

fictions to try to save his own skin while recklessly and irresponsibly creating tensions in Ottawa's religious communities (as to fiction, I refer to the example of his lying about me going to Israel last July)."

Ensuite, il demande:

"How best to get the facts out? Allan."

Alors, vous voyez que Monsieur Rock a une opinion très négative de ma carrière, de mon enseignement, de -- de toutes sortes de choses. Il va chercher des liens avec Palestine, et cetera, et il communique ceci à Bruce Feldthusen qui est le Doyen dans la motion actuelle et il dit: Comment est-ce qu'on peut faire pour communiquer mon message -- celui que je présente ici si j'étais Allan Rock -- à la communauté?

Il cherche à -- on pourrait dire il cherche à ternir ma réputation dans la communauté. Il a un message qu'il veut avancer et il demande à Bruce Feldthusen:

« How can we best get the facts out ... »

Mes faits à moi que je viens de décrire, que dirait Allan Rock.

Donc, il y a un courriel ici où les deux protagonistes dans la motion actuelle -- Bruce Feldthusen et Allan Rock -- s'échangent de cette façon-là.

Et notons que ça c'était en avril 2009. C'est après -- c'est après que le rapport de -- du Professeure St. Lewis a été écrit. C'est après que j'ai critiqué ce rapport en décembre 2008, que j'ai fortement critiqué ce rapport,

qu'il y a cet échange-là.

Et ensuite, Monsieur Feldthusen répond à Monsieur Rock. C'est donc la quatrième communication. C'est un courriel envoyé de Bruce Feldthusen à Allan Rock, envoyé le 19 avril 2009 à 10h41 a.m. et ça dit:

« I'm going to talk to Yael about this, this morning, and I can ask for his advice. I'm not really otherwise connected with the Muslim community. Unfortunately, Kaisar Abou-Nassar (ph), our previous Dean of Engineering, probably supports this part of Rancourt's complaint. I sent Yael links to two student articles in The Fulcrum. Are there other published articles you know of?"

Alors, il est en train -- Monsieur Feldthusen est en train d'envoyer des articles à propos de moi à une personne ---

MR. DEARDON: Your Honour ---

M. RANCOURT: --- qui va les aider ---

MR. DEARDON: Excuse me, Mr. Rancourt, for one second, please.

Your Honour, I want to object to Mr. Rancourt using any of Exhibit 2 that we're looking at here at Volume 4, page 128, with respect to Deal Feldthusen because he never put this exhibit or these -- this e-mail string to Mr. -- or Dean Feldthusen during the cross-examination.

So he can't rely on any of this as evidence with respect to -- who he is calling a "protagonist", Dean Feldthusen, because he never gave him an opportunity to defend himself on

this.

It's completely improper what he is doing.

M. RANCOURT: Je ne comprends pas le --
l'argument légal. J'aurais besoin de faire une
recherche pour comprendre l'argument légal en
question ---

LA COUR: Vous l'avez ---

M. RANCOURT: --- mais ---

LA COUR: Est-ce que vous l'avez questionné le
Doyen Feldthusen sur ---

M. RANCOURT: Ce courriel? Non. Non.

LA COUR: Donc, c'est des ---

M. RANCOURT: Mais ce courriel ---

LA COUR: C'est pas vraiment en preuve.

M. RANCOURT: --- est -- son authenticité a été
vérifiée par Allan Rock lui-même et je suis en
train de présenter ce courriel comme un document
authentique devant la Cour et il est clair
puisque Allan Rock a authentifié ce courriel que
c'est le vrai Bruce Feldthusen dont on parle ici.

Et donc, je comprends que je puisse ---

LA COUR: Mais, selon vous, c'est une -- une
preuve de quelque chose mais ---

M. RANCOURT: Oui, je suis en train de le
décrire, si vous me permettez de continuer.

Donc, on voit ici que Monsieur Feldthusen est
en train d'expliquer comment il va répondre à
Allan Rock qui demande 'How to get the facts
out?'; en d'autres mots: Comment est-ce qu'on va
dire la vérité, supposément, à propos de Denis
Rancourt? Il est en train de répondre.

Et la dernière phrase, Monsieur Feldthusen

demande:

« Are there other published articles you know of? »

O.k.? Et Monsieur Rock répond -- ça c'est le dernier, la cinquième communication dans la chaîne -- Monsieur Rock répond à Monsieur Feldthusen le 19 avril 2009 à 11h15 a.m. et il dit:

« Check this out ... »

et il y a un lien, c'est-à-dire un 'URL', c'est-à-dire un 'hyperlink' qui est là et, comme Monsieur Deardon a souvent argumenté, quand il y a un 'hyperlink', c'est -- je suis pas d'accord avec son argument mais il prétend que c'est équivalent à un attachement.

Et donc, j'ai amené l'attachement en question avec moi aujourd'hui pour le bénéfice de la Cour.

MR. DOODY: Mister -- sorry, Your Honour, Mr. Rancourt is apparently about to give you a document that's referred -- that he says is referred to in this.

This was not put to Mr. Rock, it's not in the evidence before the Court. He's about to hand up a document that he's then going to ask you to take into account.

This is highly improper. I've had no notice and it's nowhere in the evidence. I object.

LA COUR: Je peux pas référer à des documents qui ne sont pas dans la preuve.

M. RANCOURT: Donc, vous refusez l'argument de Monsieur Deardon qu'un 'hyperlink' fait partie de la communication?

5
[
LA COUR: Non -- bien, je fais juste, pour le moment ici -- les documentations, y en a beaucoup de documents. Pour eux et pour vous, c'est les mêmes règles. On peut pas ajouter d'autre preuve pendant l'audience.

M. RANCOURT: O.k.

10
MR. DEARDON: Just for the record, Your Honour, there's nothing inconsistent on my position about hyperlinks in the refusals of the examination for discovery.

What he should have done when he was cross-examining Mr. Rock was print it out, that link, and put it to him. And he never did it.

15
He never did it and, now, he's trying to hand it to the Court?

M. RANCOURT: Il y a beaucoup de choses ---

MR. DEARDON: No way.

20
M. RANCOURT: --- que je n'ai jamais fait parce que je fais ce que je peux.

25
Mais je pense que c'est un document important et je vous demanderais qu'on le considère.

LA COUR: Non, je peux pas considérer des -- de la preuve qui ne sont -- les parties n'avaient pas de chance ou d'opportunité de voir d'avance.

M. RANCOURT: D'accord.

30
Donc, pour résumer, Monsieur Rock répond à Monsieur Feldthusen avec une réponse d'un exemple d'un article qui pourrait être utilisé à leur -- à leur fin et leur fin c'est clair dans cette -- dans cette chaîne de courriels que le but c'est de soumettre dans le contexte public des informations qui sont très négatifs à mon égard.

5 C'est leur but et ils -- ils s'adonnent à ce but-là après mon congédiement. Ils continuent à me poursuivre après mon congédiement. Mon congédiement a eu lieu le 1^{er} avril 2009 et ils continuent à négocier comment ils peuvent transmettre dans le domaine public à travers leurs connexions, et cetera, une image négative et très critique à mon égard. Ce document est la preuve de ça.

10 Donc, ça va contre l'idée des motifs purs et angéliques de Monsieur Rock.

15 Et c'est important de signaler que Bruce Feldthusen et Monsieur Rock, qui sont complices dans cette communication, sont les deux qui ont mené de front la maintenance dont je parle.

20 C'est Bruce Feldthusen qui a suggéré de faire une poursuite légale. C'est Bruce Feldthusen qui a amené la plaignante voir le Président Rock pour demander de l'argent pour ---

25 **LA COUR:** Est-ce que c'est Feldthusen qui a suggéré que Professeure St-Lewis actionne ou est-ce qu'il a simplement demandé que l'Université paie pour ses frais?

30 **M. RANCOURT:** Bon, nous allons regarder ces subtilités-là dans l'évidence qui vient.

Une ---

MR. DEARDON: That's completely misleading.

M. RANCOURT: Une ---

MR. DEARDON: He supported her.

M. RANCOURT: Merci pour votre argument, Monsieur Deardon.

MR. DEARDON: No, actually, it was evidence.

M. RANCOURT: Bon.

MR. DEARDON: Evidence given by the witness, not me.

M. RANCOURT: Bon, bon, bon.

LA COUR: Il en reste 20 minutes, Monsieur Rancourt, dans votre ---

M. RANCOURT: Non, je -- c'est pas possible, j'ai même pas commencé la motion encore.

LA COUR: Bon, il faut faire des références -- pour des références, je vais les regarder, c'est par écrit. C'est à vous à m'amener à vos points.

M. RANCOURT: C'est -- je fais de mon mieux. Je présente les choses que, ---

LA COUR: Non ---

M. RANCOURT: --- d'après moi, sont ---

LA COUR: Non.

M. RANCOURT: --- les plus importantes en ce moment.

LA COUR: Vous avez été avisé au tout début que le temps qu'on complètera ça sera pour midi et demi.

Donc, c'est à vous à gérer votre temps.

M. RANCOURT: C'est impossible.

Alors, j'aimerais montrer comment Monsieur Rock a réagi quand je lui ai montré cette communication-là et, donc, nous allons dans le tome 3 du dossier de la motion et nous allons -- o.k., donc, à l'onglet 16, c'est le procès-verbal de Monsieur Rock du 18 avril 2012 et je vais à la page 110 de ce procès-verbal.

MR. DOODY: Page 115 of the record?

M. RANCOURT: Oui.

LA COUR: Quelle onglet?

M. RANCOURT: C'est ça.

LA COUR: Quel onglet?

M. RANCOURT: C'est l'onglet 16 ---

LA COUR: Oui.

M. RANCOURT: --- au tome 3.

LA COUR: Oui.

M. RANCOURT: Et je veux montrer -- alors, voici, je pose la question:

« I'm going to quote from the third e-mail down here ... »

LA COUR: Quelle page? Quelle page encore? À quelle page?

M. RANCOURT: Cent quinze (115) du dossier de la motion ou 110 de -- de -- du procès-verbal; d'accord?

Et je dis, je pose la question:

« I'm going to quote from the third e-mail down here. This is from Allan Rock dated ... to ... »

et cetera.

Et là, je cite le courriel qu'on vient de regarder; n'est-ce pas?

Et ensuite, je dis:

« Do you remember sending that? »

Il dit:

"Oh, yes."

Monsieur Doody dit:

"Don't answer the question."

Et je dis:

"You already answered "Yes"; didn't you?"

Il dit:

"It doesn't make any difference so ...
But you did answer "Yes"; didn't you?"

Il dit:

"Yes.

Thank you. Given your thus expressed
opinions and efforts, Mr. Rock, even after I
was dismissed from my tenured full
professorship, do you think you could be
objective about me?

Mr. Rock, answer the question."

Il dit:

"Do I think I could be objective about you?"

Je dis:

"Yes?"

Il dit:

"I cannot deny that I have a view about you,
Mr. Rancourt, but I can tell you under oath,
for the benefit of the Court, that my view
about you had nothing whatsoever to do with
our motive in agreeing to fund this lawsuit.
That was all about our moral obligation to a
member of our academic staff ..."

et cetera.

Et là, je dis:

« Thank you. Now, what ... »

MR. DOODY: Perhaps Mr. Rancourt could read the
entire sentence ---

M. RANCOURT: O.k., je vais ---

MR. DOODY: --- to put it in context.

M. RANCOURT: Merci, très bien. Si Monsieur
Doody insiste, je vais lire le tout:

« ... a member of our academic staff and the

right thing for the university to do for someone who had been defamed by an outrageously racist attack. »

Ensuite, je dis:

"Thank you. Now, what is this view that you hold of me, Mr. Rock?"

Il dit:

"I think part of it is expressed in the e-mails you just showed me, Mr. Rancourt."

Et je dis:

"Q. Mr. Rock, you just stated very clearly on the record that you have a view about me. What is your view about me?"

A. I just answered that question.

Q. What is your view about me, Mr. Rock?

A. I just answered that question.

Q. No, you didn't.

Mr. Doody: Don't badger the witness. Don't argue with him.

Mr. Rancourt: He didn't answer the question.

Q. So what I just read is a complete summary of your view of me?"

Ça c'est ma question. Il dit:

« A. I think that it is indicative of it.

Q. Indicative, fine. Indicative is far from complete. I want to know your view of me, Mr. Rock.

A. Mr. Rancourt, the e-mail is indicative and, as I said, whatever my view of you had nothing to do with the motive of the university to reimburse the legal fees."

Et là, je dis:

« I have heard that already, Mr. Rock. Mr. Rock, your view of me has become relevant to this examination by virtue of the fact that you brought it up in answering one of my questions.”

Monsieur Doody s’objecte à ça et je dis:

« Mr. Rock, what is your view of me? »

Et il répond:

“As I said, it is indicative. The e-mails that you refer to are indicative of my view of you.”

Et ça continue comme ça, monsieur le juge, pendant des pages et des pages et Monsieur Rock ne répond jamais à ma question. Il ne répond jamais à cette question-là.

LA COUR: Et ça c’est -- ça, ça faisait partie de votre motion devant le Juge -- de la Juge Beaudoin?

M. RANCOURT: Non.

LA COUR: Non?

M. RANCOURT: Non, ça c’est la motion champartie qu’on est en train de discuter. C’est la première fois que je présente ça devant la Cour.

MR. DOODY: Mr. Rancourt, to be clear, did not raise that when he brought the motion before Justice Beaudoin seeking answers to -- I can’t remember but 100 and some odd -- if my recollection -- questions to which objection has been taken. He did not seek an order requiring that that be answered and nor did he, when he read to the Court, at the bottom of page 112 of the transcript where Mr. Rock said:

"As I said, it is indicative, the e-mails that you referred to are indicative of my view of you ..."

Mr. Rock went on to say:

"... but I want to stress that whatever my view is of you has nothing to do with the motive of the university in funding this lawsuit."

M. RANCOURT: Il y a -- mais il y a aucun doute que ---

MR. DOODY: And then, it ---

M. RANCOURT: Il y a aucun doute que le parti opposant a une opinion différente. Il y a aucun doute. C'est ça mon -- c'est ça mon point.

MR. DOODY: Your Honour, my objection was that if Mr. Rancourt is going to read from the evidence, it is essential that he read the entire evidence to put it in context.

M. RANCOURT: Dans ce cas-là, il faut que je lise tout le procès-verbal. C'est complètement ridicule comme proposition.

Mais voici, monsieur le juge, je me souviens pas si oui ou non c'était une de mes questions de refus. Honnêtement, je me souviens pas. Il y avait -- il y avait beaucoup de questions de refus, si ça en est une, je ne me souviens pas.

LA COUR: Mais votre point c'est le Président Rock avait une vue, mettons, négatif de vous, votre record pédagogique?

M. RANCOURT: C'est beaucoup plus que ça, monsieur le juge.

LA COUR: Mettons c'est négatif mais il dit que ça avait rien à faire avec la décision de payer

les frais légaux de Madame St. Lewis.

Ça c'est son témoignage.

M. RANCOURT: Monsieur le juge, vous êtes en train de restreindre l'évidence que je viens de donner.

LA COUR: Non.

M. RANCOURT: J'ai montré que Monsieur Rock et Monsieur Feldthusen ensemble travaillent pour sortir dans le domaine public des opinions négatives à mon égard.

J'ai montré de l'évidence concrète à cet effet-là. C'est beaucoup plus qu'une simple opinion, c'est: Qui est-ce qu'on peut trouver pour mettre ça dans le domaine public qu'il n'est pas un bon pédagogue, et cetera, et cetera? Qui est-ce qu'on peut trouver?

Bien, voici une suggestion. Voici une autre suggestion. Voici un lien. Comment on va faire?

Ce n'est pas une simple opinion négative, c'est un travail voulu pour ---

LA COUR: Mais ça c'est surprenant parce que l'université a terminé votre emploi comme professeur. Il doit avoir un point de vue négatif de vos -- de votre -- je sais pas les raisons. Ça c'est un autre dossier que -- mais j'imagine que ---

M. RANCOURT: Monsieur le juge, j'ai ---

LA COUR: --- terminer un employé c'est ---

M. RANCOURT: --- j'ai du mal à comprendre ce que vous venez de dire. Vous êtes en train de suggérer que, parce que l'université m'a congédié, que Monsieur Rock a raison d'avoir ces

opinions négatives ---

LA COUR: Pas raison. Non, non, j'ai pas ---

M. RANCOURT: --- à propos de mes 'toxic rants',
et cetera, à mon sujet.

LA COUR: C'est pas si y a raison. J'ai pas dit
qu'y a raison, non, mais qu'y avait un point de
vue -- peut-être erroné -- de vous, de négatif.

M. RANCOURT: Monsieur le juge ---

LA COUR: De négatif envers vous. C'est ça --
c'est ça votre point. Je pense que c'est ça.

M. RANCOURT: Monsieur le juge, ce que vous
proposez n'est pas ---

LA COUR: C'est pas je vous propose, je propose
rien.

M. RANCOURT: --- n'est pas correct, monsieur le
juge.

LA COUR: Il y avait ---

M. RANCOURT: Quand un professeur est congédié

LA COUR: Oui.

M. RANCOURT: --- il est congédié parce que le --
la seule raison qu'on peut congédier un
professeur avec permanence de 23 ans c'est si il
ne fait pas son travail ---

LA COUR: C'est négatif. Le point de vue ---

M. RANCOURT: Si il ne réussit pas à faire son
travail.

LA COUR: Oui.

M. RANCOURT: Ça n'a rien à voir avec ses
opinions, ça n'a rien à voir avec ---

LA COUR: Non, non. Non, non.

M. RANCOURT: --- une opinion négative que le --

que le Président peut avoir de ce -- de cet individu.

En fait, en théorie, le Président n'est même pas impliqué dans cette décision de congédiement. En théorie.

LA COUR: Oui.

M. RANCOURT: En pratique, évidemment, c'est toute une autre histoire. Mais ---

LA COUR: O.k. Mais, selon vous, il était négatif envers vous? Plus que négatif, très négatif.

Ça c'est votre point; n'est-ce pas?

M. RANCOURT: Non, je viens de vous expliquer à maintes fois, avec preuve à l'appui, qu'il a travaillé consciemment pour sortir dans les médias et dans le domaine public des opinions très négatives à mon sujet qui ne sont pas justifiées.

Mais ça c'est une autre question. Ça c'est une autre question.

LA COUR: Ça c'est pas tranché. Est-ce qu'il a raison ou non.

M. RANCOURT: Mais mon point est, justifié ou pas, il a travaillé avec Bruce Feldthusen. Ils ont travaillé ensemble pour attaquer ---

MR. DEARDON: No, I object, Your Honour.

LA COUR: Non, non.

MR. DEARDON: Again, he's referring to the Dean and he can't lump the Dean in with what he's doing to attack President Rock.

M. RANCOURT: Et je -- je ---

MR. DEARDON: Because he never put these e-mails

to Dean Feldthusen in his cross-examination.

M. RANCOURT: Je fais ---

MR. DOODY: Nor -- nor, Your Honour, did he put to Mr. Rock the proposition that he just put to the Court which was that Mr. Rock and Dean Feldthusen were working together to put into the public realm a negative view of him.

That's nowhere in the evidence. He didn't ask Mr. Rock that. It doesn't appear on these documents and ---

M. RANCOURT: Les documents ---

MR. DOODY: --- and, as we'll hear, Justice Beaudoin ruled that that was all irrelevant in any event and my -- and Mr. Rancourt is bound by that.

M. RANCOURT: Et ---

MR. DOODY: But there is no evidence of the kind he just put to the Court.

M. RANCOURT: Les documents parlent pour eux-mêmes, monsieur le juge. Les documents sont très clairs. Ils sont noir sur blanc. Il y a un échange chronologique de courriels et mon -- ma soumission est entièrement consistante avec ces documents sinon c'est une absurdité totale de même dire qu'on peut avoir une preuve pour quelque chose.

LA COUR: O.k.

Il en reste 10 minutes.

M. RANCOURT: Non, c'est -- c'est pas possible.

LA COUR: Oui, bon ---

M. RANCOURT: Je -- je n'ai pas -- alors, je dois signaler jusqu'à maintenant en parlant des motifs

de Monsieur Rock ---

LA COUR: Oui.

M. RANCOURT: --- que je n'ai pas signalé les évidences les plus fortes parce que les évidences les plus fortes sont contestées.

Alors, les évidences les plus fortes sont contestées mais elles sont plus fortes que celles que je vous ai montrées et c'est pour ça que, par une question de justice, puisque votre devoir c'est d'examiner les motifs en détail, ces documents-là doivent être admis; les documents dont je parle qui n'ont pas encore été admis mais je vais faire des soumissions pourquoi ils doivent être admis.

LA COUR: Non, non, ces documents sont pas -- fait pas part de la preuve pour cette motion.

M. RANCOURT: Les -- on n'a pas traité -- on n'a pas traité encore de l'admissibilité de mes affidavits. C'est le prochain sujet.

LA COUR: O.k.

M. RANCOURT: O.k.?

LA COUR: Allons-y au prochain sujet.

M. RANCOURT: Mais ---

LA COUR: Si c'est des références, vous pouvez me pointer ou le signaler oùsqu'y sont que je devrais les lire. C'est de même qu'on fait ça avec des -- les choses compliquées.

S'il y a des courriels ou des choses que vous devrez ---

M. RANCOURT: J'ai, monsieur le juge ---

LA COUR: Donnez-moi une liste et puis je vais les regarder, c'est sûr.

5
M. RANCOURT: Monsieur le juge, il est clair dans -- dans notre discussion d'à matin, il est clair que mon travail est de vous faire voir mon point de vue et que ça ne se fait pas par écrit, je dois la faire en paroles avec vous.

LA COUR: Non, non, j'ai pas dit de le faire par écrit, c'est de me montrer oùsqu'est la preuve, mettons, de ---

10
M. RANCOURT: Oui, je vais vous signaler les preuves.

LA COUR: C'est ça.

M. RANCOURT: Je vais vous signaler les preuves.

15
Donc, on est encore -- moi, je suis encore dans l'argument pourquoi cette chose doit aller en procès et une autre grande question de crédibilité de pourquoi ça doit aller en procès, j'ai parlé de la crédibilité de Allan Rock par rapport à ses motifs, l'autre -- une autre grande question de crédibilité c'est l'intention au préalable de la plaignante de poursuivre le défendant.

20
Et je dis que il y avait d'intention au préalable de faire cette poursuite juridique, que l'intention n'est venue que après qu'on lui ait suggéré que ça pouvait être payé par l'Université d'Ottawa et je vais montrer les preuves à cet effet-là.

25
30
La plaignante avait-elle l'intention de poursuivre le défendant? Avant que son Doyen lui dise que l'Université doit financer son action, a un devoir de financer son action, est-ce qu'elle avait l'intention avant qu'on organise -- que son

Doyen organise une rencontre avec le Président, Allan Rock. C'est le Doyen qui a organisé la rencontre, exprime son soutien fort ce plan, suggère l'avocat idéal en Monsieur Deardon et que le Président donne son appui et exprime son accord pour Monsieur Deardon.

Avant ces événements du 11 au 15 avril 2012, la plaignante avait-elle -- était-elle disposée à entreprendre l'action légale?

Ça c'est la question centrale et c'est une question de crédibilité.

Alors, voyons les évidences qui contredisent complètement cette notion que la plaignante avait une intention au préalable.

Monsieur Deardon voudrait vous faire croire que tout a commencé le 11 février 2011. La date du blog intitulé « Did Professor Joanne St. Lewis act as Allan Rock's house negro? » C'est pas vrai, tout a commencé en novembre 2008 avec le Rapport de l'Association des étudiants de l'Université d'Ottawa.

Ce rapport fut suivi ---

MR. DOODY: Just ---

M. RANCOURT: --- dans quelques jours ---

MR. DOODY: Just -- and I'm trying to assist Mr. Rancourt here.

Here's now referred twice about a meeting of April 15th, 2012. I think he means April 15th, 2011, Your Honour.

M. RANCOURT: Ah! Bien sûr, je m'excuse.

LA COUR: Bon.

M. RANCOURT: C'était -- ces meetings-là sont en

-- alors, je m'excuse formellement, les meetings dont je parlais du 11 et du 15 avril étaient en 2011.

Ça ce sont -- il y avait un premier meeting le 11 avril -- juste pour vous diriger, monsieur le juge, il y avait un premier meeting le 11 avril en 2011 qui était entre la plaignante et son Doyen, M. Feldthusen, et un deuxième meeting qui était le 15 avril ---

LA COUR: Oui.

M. RANCOURT: --- 2011 avec le Président.

O.k., tout a commencé donc -- ce rapport fut suivi de quelques jours par l'évaluation du Professeure St. Lewis pour -- qui est sortie aussi en novembre 2008.

Ensuite -- et ça c'est important, monsieur le juge -- en décembre 2008, le défendant, moi-même, a écrit un article blog, le 6 décembre 2008, critiquant sévèrement le Professeure St. Lewis et son évaluation.

Ce blog de 2008 est important parce qu'il fait toutes les mêmes critiques que l'article du blog du 11 février 2011.

MR. DEARDON: That's actually false. He never called her a "House Negro".

M. RANCOURT: Si on regarde le sens du terme politique et racial, le sens est préservé, la critique du sens est préservé dans le premier blog.

Monsieur Deardon veut s'attarder à la forme, moi, je m'attarde au contenu. C'était toute la même -- les mêmes critiques de manque de

professionnalisme, de manque d'indépendance et de servitude envers l'employeur. Toutes les mêmes critiques sévères à l'égard du Professeure St. Lewis ont été faites en décembre 2008 sur mon blog « U of O Watch ».

Mon affidavit du 16 janvier 2012 qui lui n'est pas contesté de façon sérieuse -- c'est l'affidavit de soutien de la motion. Si on peut tourner à cet affidavit-là, c'est dans le -- c'est dans le tome 1, à l'onglet 2, et si on va à la page 19 du dossier de motion ---

LA COUR: Volume -- tome 1?

M. RANCOURT: Oui, tome 1, dossier de motion.

Je vais à la page 19 et j'ai -- la page 19 du dossier de motion, tome 1, et là on est dans le milieu de mon affidavit du 16 janvier 2012 qui soutient la motion en cours et cet affidavit dit -- a une section qui s'intitule « Non-responsiveness to blog posts ».

Et le paragraphe 44 attache l'Exhibit Q qui est à la page 159 de cet -- de cet affidavit ou du dossier de motion. Donc, c'est une grosse épaisseur de papier plus loin là. Je m'excuse qu'il y a pas d'onglet précis pour l'Exhibit Q mais je suis à la page 159.

LA COUR: Cent cinquante-neuf (159)?

M. RANCOURT: Oui. Vous y êtes?

LA COUR: Oui.

M. RANCOURT: O.k.

Ça c'est l'article de décembre, le 6 décembre 2008 à propos du Professeure St. Lewis que j'ai écrit. C'est intitulé: « Rock administration

prefers to confuse independent with internal rather than address systemic racism" et ça c'est un article assez long qui fait des critiques très sévères du Professeure St. Lewis.

Entre autres, si vous regardez la prochaine page, la page 160, en bas de page, les trois derniers paragraphes de l'article, ça dit la chose suivante:

« The University's evaluation report for Student Appeal Centre 2008 Annual Report by service intellectual Assistant Professor Joanne St. Lewis ... »

Je dis qu'elle est un "service intellectual", qu'elle a fait ça par servitude:

« ... the professor herself calls it an independent evaluation in the first line of her report ... »

Ensuite, je dis:

"Students who would attempt to pass an internal report as an independent report would probably be accused of academic fraud but such intellectual dishonesty appears to be acceptable to the institution for a report denouncing a Student Association allegation of racism in treating academic fraud cases."

Je parle de fraude. Je parle de déshonnêteté intellectuelle. Ce sont des critiques très sérieuses qui vont au fond du professionnalisme de la personne.

Ensuite, le prochain paragraphe:

« Rather than being an independent report and far from being of professional caliber, the

St. Lewis evaluation is *prima facie* intended to diffused a media and public relations image management liability for the university."

Et je continue:

"The university appears to be far more concerned with casting doubt on the conclusions of the SAC Report than on independent examination of the issues or on implementing any preventative measures."

LA COUR: Mais cet article ne fait pas partie de l'action en diffamation?

M. RANCOURT: Absolument, oui.

LA COUR: Oui?

M. RANCOURT: Cet article est mentionné dans le 'Statement of Claim'.

LA COUR: C'est ---

M. RANCOURT: Il y a un paragraphe qui mentionne cet article ---

MR. DEARDON: Your Honour, you're absolutely correct. He doesn't understand the law of liable. Every publication is a separate cause of action.

THE COUR: Correct.

MR. DEARDON: And so this is a separate cause of action, December of 2008, and what he wrote on February 11th, 2011 is a separate cause of action and what he wrote in May of 2012 is also a separate cause of action.

And it's only the latter two ---

THE COURT: Two that are -- there's time limits ---

MR. DEARDON: --- that are subject to this liable action: ---

THE COURT: There's time limits.

MR. DEARDON: --- the February and May blogs that he wrote in 2012.

M. RANCOURT: Je suis -- je comprends -- je crois comprendre ce que Monsieur Deardon dit mais mon point n'est pas ça, mon point est la chose suivante: En 2008, je faisais tous les mêmes critiques et très sévères et, entre 2008 et 2011, il y a eu aucune action contre moi, il y a eu aucune lettre me demandant de changer des choses et le Professeure St. Lewis était complètement informée de -- de ce -- de cet article-là.

C'est ça mon point par rapport à champartie et par rapport à intention de poursuivre; o.k.?

Par exemple -- par exemple, à ---

LA COUR: Mais parce que -- est-ce que vous avez pas posé ces questions dans vos -- à la Professeure St. Lewis?

Vous avez proposé: Est-ce que vous avez, à travers l'intention, de poursuivre; oui ou non?

Puis si je comprends bien, elle a dit: « Oui, j'avais l'intention de poursuivre. »?

M. RANCOURT: Non, elle a -- elle a ---

LA COUR: Est-ce que j'ai pas eu cette réponse?

M. RANCOURT: Non, elle a pas dit qu'elle avait l'intention de poursuivre en 2008 ni en 2009 ---

LA COUR: Non, non, mais en 2011?

M. RANCOURT: --- ni en 2010.

LA COUR: Vous avez questionné dans les transcriptions ici ---

M. RANCOURT: Oui.

LA COUR: --- des questions directes à
Professeure St. Lewis.

M. RANCOURT: Oui.

LA COUR: Vous l'avez questionnée: « Est-ce que
vous avez une intention de poursuivre? » Elle a
dit: « Oui. »

C'est ça. Est-ce que j'ai ---

M. RANCOURT: C'est les évidences ---

LA COUR: Est-ce que je comprends pas la preuve?

M. RANCOURT: Justement. Justement, c'est les
évidences que je vais vous présenter.

LA COUR: Oui.

M. RANCOURT: Elle -- elle ---

LA COUR: Elle a dit ça?

M. RANCOURT: Elle a dit ça mais, moi, j'ai de la
preuve concrète ---

LA COUR: Selon ---

M. RANCOURT: --- documentaire ---

LA COUR: Selon vous, c'est pas vrai?

M. RANCOURT: J'ai la preuve, elle se contredit
dans ses propres informations et j'ai la preuve
que c'est pas vrai et je vais le présenter mais
je voulais d'abord faire cet argument qu'on parle
depuis 2008, décembre 2008, où il y a eu toutes
ces critiques très sérieuses et aucune intention
de poursuivre.

Et surtout, si vous regardez le document --
l'Exhibit R de cet affidavit qui lui est le
prochain document ici, à la page 165 ---

LA COUR: Vous êtes à quel tome?

M. RANCOURT: Je suis toujours dans le même tome

1, à la page 165. Je suis -- je reste avec le tome 1 quelque temps.

Est-ce que vous y êtes?

LA COUR: Oui.

M. RANCOURT: O.k.

Ça c'est un courriel ---

LA COUR: L'évaluation ---

M. RANCOURT: --- que j'ai envoyé au Professeure St. Lewis en -- le 7 décembre 2008 et ça dit:

« Dear colleague, I posted my assessment of your Evaluation Report here ...»

et je donne le 'hyperlink':

« Please feel free to post a reply in 'Comment' »

Je suis un collègue à l'université qui dit à un professeur: J'ai fait une évaluation, un « assessment » de votre rapport et le voici.

Elle va nous dire qu'elle l'a jamais regardé, que elle avait pas à le regarder, et cetera.

Bon, peut-être que c'est vrai, je sais pas, mais le point est que je lui ai dit en décembre 2008 qu'il y avait cet article-là. Et donc, pendant toutes ces années, elle s'est pas préoccupée de la chose.

En plus, il y a un article ici -- le -- je vais maintenant à l'Exhibit S ---

LA COUR: O.k., bien, on est -- on arrive à midi et demi.

Donc, je crois la solution c'est de vous laisser faire des représentations -- I'll hear submissions on what we do at this point forward. Maybe I'll hear submissions: should there be

written submissions? He hasn't finished his article or I have your written factum -- j'ai votre factum ici ---

M. RANCOURT: Non, mais mes ---

LA COUR: Donc, parce que vous dépassez le temps.

M. RANCOURT: Mais écoutez, monsieur le juge.

LA COUR: Non, parce que, sinon, ça va être trois ---

M. RANCOURT: On va faire des soumissions.

LA COUR: Oui.

M. RANCOURT: Monsieur Deardon va argumenter pourquoi on doit me couper tout de suite, et cetera, et moi je vais argumenter pourquoi je dois continuer.

LA COUR: Oui.

M. RANCOURT: Alors, permettez-nous de faire des bonnes soumissions et, ensuite, vous pouvez décider.

Mais -- mais je veux les faire ces soumissions-là et je vais prendre cinq minutes pour expliquer pourquoi je dois continuer.

MR. DEARDON: No, he ---

LA COUR: Non, non, non, non, non.

MR. DEARDON: Your Honour ---

MR. DEARDON: Non, parce que là -- quand j'ai établi -- j'ai dit trois ou quatre fois, la dernière fois, ça dépassait jusqu'à sept heures. Trois heures, eux-autres y avaient 45 minutes. Je vous ai accordé trois fois la -- le temps que j'avais accordé -- ça c'est pas équitable, franchement, de donner à une partie le double ou trois fois le temps et ---

M. RANCOURT: Excusez-moi, monsieur le juge ---

LA COUR: O.k., mais, selon moi, ---

M. RANCOURT: --- êtes-vous en train de dire que vous n'avez pas été équitable envers l'autre partie?

LA COUR: Non ---

M. RANCOURT: Êtes-vous en train de faire cette trouvaille devant le Tribunal? J'aimerais comprendre ce que vous êtes en train de dire parce que ---

LA COUR: Bon, j'ai pas l'intention -- j'ai pas l'intention -- je veux être équitable aux deux parties dans cette matière.

Donc, vous êtes -- on a une journée. On est midi et demi. C'est la moitié de la journée, donc, puis vous avez utilisé le temps comme ce que vous avez choisi.

M. RANCOURT: De façon importante.

LA COUR: J'ai pas fait de critique de votre approche.

M. RANCOURT: D'accord.

LA COUR: J'ai pas dit ça mais c'est simplement une question de priorités.

C'est quand qu'on fait des choses, on fait une priorité puis vous l'avez choisie. C'est à vous à le faire. C'était bien avisé.

Okay, so that's -- Mr. Deardon, what do you have to say?

MR. DEARDON: Your Honour, if I could just put on the record the reminder that, in my letter of December 10th to Your Honour which Mr. Rancourt was cc'd on, paragraph 11, I said and gave him

notice:

"Professor St. Lewis requests that if the Defendant Rancourt does not withdraw his three preliminary matters all of the time spent arguing these preliminary matters be included in the time allocated to the Defendant Rancourt to argue his champerty motion on the merits."

And he knew that on Monday. He was told again by Your Honour this morning and, as I said in my December 11th letter to the Court, cc'd to Mr. Rancourt, it doesn't matter what privileges you give this Defendant, he just ignores you. He says "impossible" and he just keeps on doing whatever he wants to do and he, as a self-rep, is not allowed to do that.

As Justice Brown had held in that case I mentioned earlier, Your Honour, the *Petronix Research* case is that:

"... self-represented litigants are not entitled to special treatment. It is not for the Court to read into pleadings or affidavits of self-represented parties matters that should have been included in those documents; to do so would be very unfair to the other party."

So he's chosen to take you to a blog he wrote in 2008 that has nothing to do with this libel action. He tried to ask Professor St. Lewis questions on that blog in his cross-examination. They were refused. The refusals were upheld.

But he chose to do this will full warning,

Your Honour. He never listens and he cannot get away with it because, as Justice Brown said, it's unfair to the other party. Really unfair.

LA COUR: Okay, so -- Monsieur Rancourt, je vais vous accorder ---

M. RANCOURT: Je vais répondre?

LA COUR: Je vais vous accorder jusqu'à une heure -- une heure, il faut que tu fais -- comment est-ce qu'on dit en anglais -- focus -- il faut que tu 'focus' sur tes points sur ta motion champartie.

M. RANCOURT: Monsieur Deardon ---

LA COUR: Et c'est à vous. C'est à vous.

M. RANCOURT: Monsieur Deardon a fait des arguments ---

LA COUR: Là, c'est la fin. C'est la fin, fin, fin ---

M. RANCOURT: Je ---

LA COUR: --- parce que, à deux heures, ça va être -- je sais pas si c'est Monsieur Doody ou si c'est Monsieur Deardon ---

MR. DEARDON: Me.

THE COURT: Mr. Deardon, 2:00 o'clock.
Bon.

M. RANCOURT: Bon, je vais prendre ---

LA COUR: Allons-y.

M. RANCOURT: Je choisis de prendre ---

LA COUR: Choisis là ---

M. RANCOURT: --- quelques minutes ---

LA COUR: Oui?

M. RANCOURT: --- pour dire pourquoi ce qui est en train de se passer est injuste et voici

pourquoi.

LA COUR: O.k.

M. RANCOURT: Parce que vous dites que vous avez mon factum écrit et je vous dis que cette action prend toute mon énergie et ce factum a été écrit rapidement et je n'ai pas eu le temps de affiner mes arguments.

Les arguments oraux que je suis en train de vous présenter, en faisant les liens aux évidences, sont des choses affinées, améliorées, meilleures et j'ai besoin de les faire en oral devant vous.

C'est ça mon argument.

MR. DEARDON: Your Honour, I object to what he is putting on the record.

May the 4th, Justice Beaudoin set August 29th to have this argued. So he tells you that he doesn't have more time? He bought himself an additional two months of time by his false and specious accusations against Justice Beaudoin that he made on July 24th.

He has had since January to be thinking about his factum. Since January.

M. RANCOURT: Combien ---

MR. DEARDON: A year

M. RANCOURT: Monsieur le juge, combien de fois est-ce qu'on va entendre ces mêmes propos de Monsieur Deardon?

LA COUR: Oui.

M. RANCOURT: Je suis ---

LA COUR: Allons-y. Allons-y ---

M. RANCOURT: Je cours d'une date à l'autre.

LA COUR: Allons-y à votre ---

M. RANCOURT: Merci.

LA COUR: --- votre représentation sur votre motion champartie.

M. RANCOURT: Je ne peux pas faire des représentations sur champartie avant qu'on n'ait réglé quelle évidence est permise et pour ça il faut parler des affidavits.

Ils sont contestés les affidavits. Il faut parler de ça.

LA COUR: C'est clair, clair ---

M. RANCOURT: On n'a pas touché à la question encore ---

LA COUR: --- qu'on dépasse pas ---

M. RANCOURT: --- les affidavits.

LA COUR: --- à 1h00 vous êtes fini. Vous êtes fini à 1h00, donc, c'est à vous à ---

M. RANCOURT: C'est une injustice ---

LA COUR: C'est votre choix ---

M. RANCOURT: --- fondamentale ---

LA COUR: Si vous voulez pas argumenter votre motion, c'est à vous. Donc, je peux pas vous -- le faire pour vous.

M. RANCOURT: Je vais argumenter ce qui est ---

LA COUR: C'est à vous.

M. RANCOURT: Là, j'ai ---

LA COUR: Non, non ---

M. RANCOURT: Je viens juste d'argumenter en faisant les points ---

LA COUR: Mais vous avez pas d'intention d'argumenter ---

M. RANCOURT: --- centrals ---

LA COUR: Vous avez pas -- on est ici depuis 10h00. Ça c'est trois heures puis vous l'avez pas arrivé à votre motion de champartie.

M. RANCOURT: C'est pas vrai, monsieur le juge.

LA COUR: Il faut que j'assume que vous êtes pas intéressé de le poursuive ou, je sais pas, vous essayez d'avoir une ---

M. RANCOURT: Mais, monsieur le juge, ---

LA COUR: --- comme quelqu'un pour faire appel parce que vous avez pas eu la chance.

Mais vous avez eu trois heures pour le faire puis vous le faisez pas même maintenant.

M. RANCOURT: C'est pas vrai, monsieur le juge.

LA COUR: Mais c'est à vous à le faire. C'est votre choix, je peux pas le faire pour vous, finalement.

M. RANCOURT: Je vous ai expliqué, monsieur le juge, en commençant cet argument que ---

LA COUR: C'est à vous, allons-y.

M. RANCOURT: --- que c'était pour servir dans la motion principale et que c'était des choses centrales. Je vous ai expliqué ça au début et c'est pour ça que je -- je le -- je le continue.

(COURTE PAUSE)

M. RANCOURT: O.k., on est dans le -- on est dans mon affidavit, je crois. On est au tome 1 et je peux simplement vous montrer l'Exhibit U qui est à la page 174.

LA COUR: Ça c'est onglet 17? Ça c'est vous êtes à quel onglet?

M. RANCOURT: Je suis à l'onglet 2 du tome 1.

MR. DEARDON: Tab U, 2U.

M. RANCOURT: Et donc, à la page 174.

Est-ce que vous y êtes?

LA COUR: Oui.

M. RANCOURT: Ça c'est un courriel que j'ai envoyé le 11 février 2011, exactement le même jour où j'ai -- où a été publié sur le blog l'article en question où j'avise Monsieur Rock et Madame St. Lewis, je dis:

« This blog is about you ... »

Je donne le lien et je dis:

« Please provide any factual corrections or comments for posting. »

Donc, je les ai avisés immédiatement de l'existence de mon blog en février, le 11 février, le jour même du blog.

Et ensuite, le même jour, j'ai renvoyé un autre courriel et j'ai dit:

« Also please inform your colleague ... »

La prochaine page:

"Also please inform your colleague, Robert Major, so he can verify the content about him."

Donc, j'ai parlé de leur collègue qui avait été le Vice-président académique. Je les ai informés pleinement de l'existence de ce blog immédiatement quand il a été publié.

J'ai reçu aucune réponse. Par contre, -- et ça c'est clé -- le Professeure St. Lewis a envoyé mon courriel à Monsieur Rock.

Alors, si vous allez au tome 1, vous restez dans le tome 1 mais maintenant vous allez à l'onglet 3, à la page 220 ---

MR. DOODY: This exhibit is from one of the affidavits which, in our submissions, is inadmissible, Your Honour.

THE COURT: Well, we'll hear -- hear him on it and I'll hear your arguments subsequently.

MR. DOODY: Right.

M. RANCOURT: O.k., donc, on voit ici que c'est une chaîne de deux courriels.

Le premier, en bas de la page, c'est mon courriel où j'envoie à Monsieur Rock et à Madame St. Lewis, je dis:

« Dear Mr. Rock and Dear Ms. St. Lewis, this blog is about you ... »

Vous voyez ça en bas de la page.

LA COUR: Oui.

M. RANCOURT: Et Madame St. Lewis envoie ce courriel-là au Président Rock et elle dit -- et ça c'est très important:

« Hi there, Allan, I make it a practice to delete the communications from Mr. Rancourt and have done that in this case ... »

Je comprends pas comment elle peut le 'deleter' et en même temps l'envoyer au -- au Président mais ça c'est une autre question:

« It has spared me a great deal of aggravation in the past ... »

Ça veut dire que, dans le passé, elle a eu des courriels de moi. Ensuite, elle dit -- ça c'est important:

« Do let me know if you want me to do anything. I will be happy to fit into whatever strategy you decide but, until then,

I intend to make no comment."

Elle est en train de dire au Président Rock elle est prête à s'intégrer dans la stratégie qu'il veut bien pour répondre à cette situation et, jusqu'à ce point-là, elle ne va pas répondre.

C'est très très important. Ça parle de deux choses. Ça parle de motif et ça parle d'intention au préalable de poursuivre. Il y avait pas d'intention ici.

Et également important à ce courriel, il y a un autre courriel clé qui est le prochain courriel dans ce même affidavit, monsieur le juge, -- je suis à la page 222 de cet affidavit -- et là il y a trois échanges dans cette chaîne de courriels.

Alors, nous allons commencer à la fin parce que, en ordre chronologique, c'était le premier.

MR. DOODY: It's 222?

M. RANCOURT: Je suis au tome 1, à la page 222, et je vais à la page 223 pour commencer au début de la chaîne chronologique, s'il vous plaît, monsieur le juge.

LA COUR: Oui.

M. RANCOURT: Et c'est un courriel envoyé de madame Lia Tarachansky à madame Joanne St. Lewis et ça dit:

« Dear Professor Joanne St. Lewis, ... »
et là, je pense que Monsieur Doody va m'obliger à lire toute le courriel plutôt que juste les phrases que j'aurais choisies alors je vais lire toute le courriel:

« I'm not sure if you at all remember me but

years ago I used to speak ... »

et cetera, et cetera:

“In 2007, I organized the “unSchooling Oppression Conference” with a group of students he put together ...”

c’est-à-dire moi -- et ensuite, très important:

“He was later asked to leave the group after he made some bizarre comments towards the people of colour in the group based on his principle that hate speech is a form of free speech.”

C’est madame Lia Tarachansky qui dit ça.

Et ensuite, le prochain paragraphe:

« I’ve kept in touch with Denis and in many ways still respect his work. However, his latest blog on U of O Watch where he refers to you in derogatory and racist language is really disturbing -- derogatory and racist language is really disturbing. I wanted to write to you to say I’m sorry that you have been forced to endure such a disgusting attack -- a disgusting attack. I’ve written to him condemning his post. It would appear that he’s seeking feedback and has received quite a bit. So if it is any consolation, it looks like there are many people who feel the same about this. I hope you are doing well.”

Ça c’est un courriel que Madame St. Lewis a lu en détail qui disait -- qui faisait appel à « hate speech », qui parlait de racisme, qui parlait d’un « disgusting attack ».

C’était clair que, dans mon article, d’après

Lia Tarachansky, il y avait quelque chose de sérieux qui se passait dans cet article-là.

Par contre, la plaignante dit qu'elle n'a pas lu à ce moment-là le blog en question mais elle a plutôt envoyé -- elle a répondu à Lia Tarachansky le 14 février 2011.

Donc, là, on parle juste quelques jours, deux jours après le blog en question, monsieur le juge. Le blog est sorti le 11 février 2011, là, on parle d'un échange de courriel le 14 février 2011 et, ici, elle répond à Lia Tarachansky et, dans le troisième paragraphe, elle dit:

« The present circumstances are unfortunate and I appreciate your support. I will let things stand and hope that he gains much needed perspective from the dialog that others like yourself are engaging in with him. »

Ça c'est pas la position de quelqu'un qui vous -- qui veut poursuivre en justice, ça c'est la position d'un professeur qui veut avoir des discussions, qui veut engager dans le domaine public une discussion sur le fond d'un problème tel qu'elle le voit ou tel que quelqu'un d'autre le voit. Ce n'est pas quelqu'un qui veut aller devant la Cour pour poursuivre quelqu'un en justice.

Et ce courriel-là qu'elle a envoyé à Lia Tarachansky, elle l'envoie ensuite à Allan Rock et à son chef de cabinet ou son chef de -- son chef exécutif, Stéphane Émard-Chabot. Le 14 février, le même jour, un peu plus tard, elle

l'envoie et elle dit:

« Hi there, I have been receiving e-mails of support which gave me a sense of the post ...»

"A sense of the post", elle dit:

"... they are definitely reinforcing my decision not to look at it. Below is a sample of the responses I am giving to those e-mails .."

et elle dit:

"... let me know if my answer poses a problem ..."

Pourquoi est-ce que sa réponse pourrait poser un problème? On peut se poser la question.

Elle demande à Allan Rock -- je vous ai déjà dit -- elle l'a déjà dit à Allan Rock qu'elle est prêt à rentrer dans sa stratégie et maintenant elle dit: si je réponds comme ça, est-ce que ça pose un problème? Dites-moi.

Donc, vous voyez qu'il y a un conflit sérieux entre les propos de la plaignante qu'elle avait tout de suite imaginé une action légale, comme possibilité, et ces courriels qui montrent qu'elle compte plutôt une discussion, un dialogue dans le domaine public entre deux professeurs.

Il y a aussi -- et ça c'est très important -- il y a une sérieuse contradiction dans les évidences orales de la plaignante que je veux vous montrer où il y a -- il y a vraiment quelque chose qui est dit qui ne peut absolument pas être vrai et qui -- c'est quelque chose de central et d'important.

Alors, je veux vous amener à cette -- à ce

point-là.

L'évidence orale sous serment du 23 avril 2012 de la plaignante. Ça touche exactement cette question de quand la décision d'intenter une poursuite a été prise et cette contradiction doit aller en procès, à mon sens, parce que c'est une question de crédibilité fondamentale.

Alors, voici, le procès-verbal, on peut aller au tome 3 de mon -- de mon dossier de motion. Alors, on doit aller au tome 3 pour trouver le procès-verbal. Voilà, j'ai trouvé le tome 3 et on doit aller à l'onglet 17 -- tome 3, onglet 17 -- et là je vais vous amener à vous montrer qu'il y a vraiment quelque chose, là, qui -- qui n'est absolument pas correct.

Et ce point-ci m'avait échappé quand j'ai écrit mon factum. Donc, c'est important que je vous le présente maintenant et c'est toute dans l'évidence. Alors, voici, si on va à la page 72 de ce procès-verbal, c'est-à-dire les pages du procès-verbal lui-même, donc, on va à la page 72, c'est la page 217 du dossier de la motion.

O.k., est-ce que vous y êtes à la page 217, monsieur le juge?

O.k., à la question 186, je demande la question à la plaignante:

« Q. When did you first decide that you would ---

A. Are you talking about to initiate?

Q. That you would initiate a legal process to solve this problem as you saw it?"

Et la réponse c'est:

"A. Okay, when I spoke to the Dean, I was already in the frame of mind that I've been defamed and that I had to do something about that. When we got to the meeting with Allan Rock, my request was specific: It was that I knew that I wanted to initiate a legal action and I knew that I wanted the university to pay the cost for it because I felt they were responsible ..." et cetera.

MR. DEARDON: Non, non, keep reading, Mr. Rancourt.

M. RANCOURT: O.k., je vais continuer. Merci.

« ... because ... were responsible ... »

Et je vous signale que c'est Monsieur Deardon qui me donne des commandes sur quoi faire; hein, monsieur le juge?

LA COUR: Oui, il faut que ça soit au complet.

M. RANCOURT: Since ---

LA COUR: Il faut que ça soit complet.

M. RANCOURT: D'accord.

« ... since I had done a report on their request. This was not my academic work published in a journal, this was them asking me ... »

Moi, je pense que ça c'est pertinent -- pas pertinent au point je veux faire là pis on le sait déjà ceci:

« ... this was them asking me to provide them with an advisory report and, three years later, this is the zoo that I'm in so I was clear that that's what it was. If that's what you mean by 'legal action', specifically, the need for the services of a

lawyer and legal counsel to assist me to handle the matter then, clearly, I had that in mind in a preliminary way on April 11th ..."
 Ça c'est la date, en 2011, qu'elle a rencontré son Doyen:

« ... and I was absolutely certain that was what I was going into the meeting to ask for on April 15th, absolutely certain. »

O.k., j'insiste là-dessus, elle est absolument certaine. Vous allez voir que ça ne peut pas être vrai.

Et donc -- et donc, là, je passe au tome 3, l'onglet 17 -- là, on va à la page 77 ---

LA COUR: La page ---

M. RANCOURT: Ah non -- oui, la page 77 du procès-verbal.

On reste dans le même tome ----

LA COUR: Oui.

M. RANCOURT: --- on va à la page 222 du 'Motion Record' qui est aussi la page 77 du procès-verbal.

LA COUR: Deux cent vingt-deux (222).

M. RANCOURT: Oui.

Là, j'espère que Monsieur Deardon va pas m'obliger à lire les paragraphes entre ceux que je veux signaler mais on verra.

Alors, voici, question 195:

« Were you personally aware of the lawyer work of Richard Deardon at the time it was discussed with the Dean? »

Et elle répond:

"At the time that the Dean ... not discuss with

the Dean -- at the time that the Dean suggested Richard Deardon as a possibility to me, I was not aware of his work."

Et un peu plus bas dans le même paragraphe:

« After my meeting ... »

MR. DEARDON: No, Your Honour, can he please keep in context?

He just skipped:

"By the time, I simply wanted to go into the meeting with some suggestions."

What would she need suggestions about a lawyer if she hadn't decided that she was actually going to sue you, Mr. Rancourt?

Keep reading the whole thing.

M. RANCOURT: O.k., mais je veux juste aider Monsieur Deardon là, je suis en train de dire que, effectivement, elle est en train de dire qu'elle avait décidé -- elle est en train de dire qu'elle avait décidé déjà. Donc, je suis d'accord avec ce que Monsieur Deardon dit par rapport à ça.

Mais je vais lire l'entier, si vous insistez.

LA COUR: Non, je peux la lire moi-même.

M. RANCOURT: Non, mais c'est parce que je veux tirer votre attention à certains ---

LA COUR: C'est quoi votre point? C'est quoi votre point ici là?

M. RANCOURT: Mais laissez-moi arriver à mon point.

Parce que c'est une séquence ---

LA COUR: Oui.

M. RANCOURT: --- qui montre une contradiction

fondamentale et je veux vous présenter cette séquence.

LA COUR: O.k.

M. RANCOURT: O.k.?

Alors, ce paragraphe, je vais pas écouter Monsieur Deardon et je vais aller en bas du paragraphe et ça dit:

« After my meeting with the President, when there was an agreement to actually pay for my legal fees then I spent my afternoon looking up this counsel and the others that I was interested in because I saw the selection of counsel as solely my decision. »

Et là, il y a un long paragraphe et elle continue à expliquer ça. O.k.?

Et la prochaine question est:

« Who were the other lawyers that you were interested in that you researched that afternoon, as you said? »

Puis là, elle dit:

"Absolutely, out of the question.

Irrelevant. Monsieur Rancourt, I don't even need to turn to my counsel, it is relevant.

Q. Do you refuse to answer? -- It is relevant, je dis, do you refuse to answer?"

Elle dit:

"No, I absolutely totally refuse to answer ..." et cetera. Bon, elle veut pas répondre. O.k.

Donc, là, elle dit -- le point central de tout ça c'est que elle a -- elle est allée chercher Monsieur Deardon, elle l'a consulté après le meeting du 15 avril, d'après elle, après

qu'elle ait eu -- reçu l'argent de l'université.
Ça c'est le deuxième point.

Le troisième point, si on reste dans le même onglet, je recule un peu et je vais à la page 55 qui est la page 200 du dossier de motion; o.k.?

Est-ce que vous y êtes?

LA COUR: Oui.

M. RANCOURT: Le paragraphe -- la question 146:

« So Mrs. St. Lewis -- Ms. St. Lewis, when did you first read my February 11th, 2011 "U of O Watch" blog article about you?"

Et elle dit:

"I read -- I should go ahead and answer?"

Elle demande à son avocat si elle doit répondre.

Elle interagit avec son avocat pendant. Monsieur Deardon dit:

« If he wants to waste his time on irrelevant matters on this one, go ahead. »

Et ensuite, elle dit:

"I read that blog post in April after, in fact, Mr. Deardon told me ..."

Donc, elle dit qu'elle l'a lu après que Monsieur Deardon lui a dit et, ensuite:

« In April of what year? »

Et elle dit:

« April of -- wow, this is so bad -- April of 2011, after I had engaged Mr. Deardon and, in fact, sometime after that, I read it on his direction because, by the time we get to April, 2011 and my having realized that you'd called me a "house negro" which was on April 8th ..."

"Q. April 8th?"

Et elle dit:

« Yes. »

Donc, elle dit qu'elle l'a réalisé que ce terme avait été utilisé le 8 avril.

Le point central ici c'est qu'elle a lu -- elle dit avoir lu l'article pour la première fois quand son avocat lui a demandé de le faire.

O.k.? Donc ---

MR. DEARDON: No, Your Honour, he must finish the answer she gave about April 8th at Question 148. He ---

M. RANCOURT: Non, je refuse.

MR. DEARDON: He's completely ripping out of context what ---

M. RANCOURT: Elle dit: Oui, c'était le 8 avril et c'est le seul point que je veux faire. C'est pas nécessaire de -- de satisfaire le besoin qu'en anglais on appellerait « self-serving » de Monsieur Deardon. C'est pas de l'information que j'utilise ---

MR. DEARDON: No, it's misleading to the Court, Your Honour. It's misleading to you, for you not to read her answer.

M. RANCOURT: Il y a rien de 'misleading', c'était le 8 avril, elle dit "oui" et ensuite elle commence un autre thème. O.k.?

Ça c'est ridicule ce que Monsieur Deardon est en train de faire.

LA COUR: Mais là, je -- je sais pas si ça -- ça commence être tard dans la -- le matin, si on est encore dans le matin.

Mais là, selon vous, ici encore, c'est quoi,

le 8 avril de répondre?

« April, what year?

April of -- okay, I can't remember ... after I engaged Mr. Deardon ... sometime after that ... I read it on his direction because by the time we get to April 2011 and having realized you called me "house negro" which was April -- on April 8th."

M. RANCOURT: Okay, donc, voici, on vient de regarder ensemble trois courriels et je le résume très courtement les points centraux de chaque courriel.

LA COUR: Mais votre point? Donnez-moi votre point.

M. RANCOURT: Justement, c'est ça mon point.

LA COUR: C'est quoi votre point?

M. RANCOURT: Regardons les trois courriels, le point central au niveau de la chronologie.

Regardez ça. Elle -- le premier courriel qu'on a lu, elle avait décidé le 15 avril qu'elle était pour poursuivre une décision ferme qu'elle a dit et elle -- avec cette décision-là, elle demandait l'argent pour le faire. Ça c'était le 15 avril avec le Président. Premier courriel

Deuxième courriel, elle a choisi son avocat, Maître Deardon, après le 15 avril quand on lui a accordé l'argent. Après qu'on lui a accordé l'argent, là, elle est allée chercher son avocat. Deuxième point.

Troisième point, elle a lu l'article blog dit « house negro » après que Maître Deardon lui recommande. C'est donc après le 15 avril. Elle

l'a lu après le 15 avril; n'est-ce pas? Tout ça est sous serment.

Maintenant, nous allons aller au tome 2 et vous allez voir une contradiction fondamentale -- c'est le seul tome que j'ai pas sorti encore. Nous allons au tome 2 et je vais aller à l'onglet 14 et ça c'est l'affidavit de Madame St. Lewis.

Voici un affidavit qu'elle a assermenté à l'onglet 14 et je vais aller à la page 62 de cet -- du dossier de motion, la page 62, volume 2. Est-ce que vous y êtes, monsieur le juge?

LA COUR: Oui, 62?

M. RANCOURT: Vous y êtes?

LA COUR: Oui.

M. RANCOURT: On est dans le milieu de l'affidavit de Madame St. Lewis. Et regardez au paragraphe 20, elle dit:

« At no time, did anyone at the University of Ottawa request that I commence an action against the Defendant. This was solely my decision and one that I made as soon as I read the Defendant's "house negro" article in April, 2011. At all times, I was the person who decided that I had to sue the Defendant to restore my personal reputation and professional reputation of a lawyer and a professor of law."

Elle dit:

"This was solely my decision and one that I made as soon as I read the Defendant's "house negro" article in April, 2011."

Donc, d'après elle, il y a une contradiction:

soit elle a décidé quand elle a lu l'article qui était après le 15 ou elle a décidé -- elle avait déjà décidé le 15. Les deux choses ne peuvent pas être vraies en même temps.

Donc, il y a une contradiction fondamentale à savoir quand elle a décidé et je vous dis que elle n'a pas décidé le 15.

Elle n'avait pas décidé le 15 et c'est pas elle qui a demandé l'argent. Vous allez voir dans la preuve c'est son Doyen qui a demandé l'argent et nous allons regarder l'évidence de son Doyen qui dit exactement ça.

Il y a le procès-verbal du Doyen qui est dans le tome 3 -- si on va au tome 3 maintenant ---

LA COUR: Mais on est en -- on dépasse le temps. C'est votre dernier dernier point ici. Votre ---

M. RANCOURT: C'est quand même central ---

LA COUR: --- Vous avez la chance de -- o.k.

M. RANCOURT: C'est question de champartie, c'est vraiment central à toute la question.

LA COUR: Va à ce point d'abord et puis ---

M. RANCOURT: Donc, je vais -- je suis à l'onglet 18 et je vais à la page 334 du dossier de motion. J'attends que vous soyez là.

LA COUR: Oui. Oui.

M. RANCOURT: Vous êtes là? O.k.

En bas de la page, question 93:

« So if I understand correctly, Professor St. Lewis by this time had decided firmly that she was going to litigate this matter. »

Et sa réponse:

"I think that would be an over-estimate -- an

over-statement, rather, but she was certainly feeling out her options."

Là, je dis:

"Did Professor St. Lewis make any request at the meeting?"

Et il répond:

"Well, ..."

J'ai demandé:

"Did she make any request at the meeting?"

Et il répond:

"Well, I made a request which I requested that the university support her in her efforts to put a stop to this defamation.

Q. When you say 'support her', could you be more specific?

A. Well, support her financially, absolutely.

Q. How did Allan Rock respond to your request?

A. Well, I think Allan Rock was upset. Well, maybe not as upset as Professor St. Lewis but as upset as I was about this turn of affairs and he was definitely interested in supported Professor St. Lewis. No decisions were actually made in my presence -- no decisions were actually made in my presence -- but I had a feeling that they would be forthcoming ..."

Alors, ça, ça contredit tout ceux qui disent que la décision du financement a été fait à ce meeting.

Et ensuite:

«Q. Okay, now, but you were present for the

entire meeting? »

Il dit:

"I was."

MR. DEARDON: Your Honour ---

M. RANCOURT: Alors, vous voyez ---

MR. DEARDON: --- he corrected himself later on. He's not -- Mr. Rancourt is not informing the Court that, later on his cross-examination, the Dean said:

"I want to go back to something ..."

and he corrected and that a decision was taken.

M. RANCOURT: J'allais justement le mentionner, Monsieur Deardon ---

MR. DEARDON: It's just ---

M. RANCOURT: --- alors, assoyez-vous.

MR. DEARDON: It's just so misleading what he's doing, Your Honour, and it should not ---

M. RANCOURT: C'est incroyable.

MR. DEARDON: --- be allowed to go on.

M. RANCOURT: C'est incroyable.

Nous pouvons lire en détail cette -- ce texte dont Monsieur Deardon parle mais -- il peut le présenter dans ses arguments aussi mais il a raison que il y a eu des qualifications de ça.

Bon ---

LA COUR: Où est-ce qu'est la clarification d'abord?

M. RANCOURT: Hein?

LA COUR: T'étais en train de lire la clarification?

M. RANCOURT: Non, non, non. J'allais signaler qu'il y en avait une ---

LA COUR: Ah!

M. RANCOURT: --- pis que Monsieur Deardon va sûrement en parler.

LA COUR: O.k., bien -- donc ---

M. RANCOURT: Ah, là, je l'ai pas dans mes notes, là, je l'ai pas ---

LA COUR: Si -- bien là, c'est pas au complet. Il faut ---

M. RANCOURT: O.k.

LA COUR: Il faut donner l'histoire au complet.

M. RANCOURT: O.k.

LA COUR: Si on est ---

M. RANCOURT: Donc, on va à la fin -- on va à la fin du procès-verbal ---

LA COUR: Si c'est la grosse contradiction pis le Doyen a corrigé sa réponse, bien là, il faut donner l'historique.

M. RANCOURT: Peut-être que Monsieur Deardon peut nous pointer à la place en question?

MR. DEARDON: Yeah, page 29, Your Honour, of ---

M. RANCOURT: Le 29 de quoi?

MR. DEARDON: Question -- page 29 of the transcript, Question 131:

"Q. Mr. Feldthusen, is there something that you said that you think is wrong?

A. It is, you know, I think that we did actually leave that meeting with the President with him saying that he would support her in a litigation. The more I think about it, the more I believe that that's right and I just don't want to mislead you. Sorry."

M. RANCOURT: Ah, Mr. Deardon, keep reading. Continuez, Monsieur Deardon, regardez, il faut regarder tout le contexte, Monsieur Deardon. Je dis:

« Thank you. Your first answer seemed quite spontaneous and genuine ... »

MR. DEARDON: That's you. That's you.

M. RANCOURT: Non, non, non, écoutez sa réponse: « I don't know why you're having second thoughts. Was there something in this questioning that caused you to have second thoughts? »

Il dit:

"Well, yes, actually. I looked at my affidavit and I realized that I'd given that a lot more thought and that it says in the affidavit it's more likely to be accurate than what I said in this situation.

Q. Okay, so you just looked at your affidavit just now?

A. Well, I've been looking at it all along."

Donc, Monsieur Deardon a mis l'affidavit du témoin devant lui ou il l'a mis lui-même et maintenant il le regarde ---

MR. DEARDON: What?

M. RANCOURT: Oui. J'ai dit il s'est rendu là d'une façon ou d'une autre. C'est pas moi qui a mis l'affidavit devant lui et ---

MR. DEARDON: No, no -- Your Honour ---

LA COUR: You can't say that -- on peut pas le dire ---

MR. DEARDON: --- that is atrocious that he made

that accusation.

LA COUR: --- on peut pas le dire sans ---

M. RANCOURT: O.k. O.k., je retire si c'est -- c'est pas important.

MR. DEARDON: There's nothing ---

M. RANCOURT: C'est pas important.

MR. DEARDON: Not important? You just slandered me, sir.

M. RANCOURT: Non, je crois pas.

MR. DEARDON: The Dean says:

"I've been looking at it all along."

I didn't say that, he had the affidavit in front of him. Shame on you, Mr. Rancourt.

M. RANCOURT: Non, quelqu'un -- il s'est rendu là d'une façon ou d'une autre.

MR. DEARDON: Shame on you.

M. RANCOURT: Il s'est rendu là d'une façon ou d'une autre, l'affidavit.

De toute façon, monsieur le juge, vous voyez bien que -- que il a répondu de façon sincère et spontanée au début et, ensuite, en pensant, après un 'break', et cetera, il a repris sa réponse.

Donc, c'est ça le -- c'est ça, comme ça qu'on complète la chose.

Donc, c'est pour ça qu'on a besoin d'un procès.

LA COUR: O.k.

M. RANCOURT: C'est pour ça qu'on a besoin d'un procès, monsieur le juge, c'est pour justement évaluer ces questions-là.

LA COUR: O.k. Donc, c'est tout. Vous aurez votre droit de réplique.

We'll adjourn until 2:00 and we'll have Mr. Deardon who will be up to bat.

THE REGISTRAR: Order, all rise. À l'ordre, levez-vous.

5 --- Upon recessing at 1:10 p.m.

--- Upon resuming at 2:05 p.m.

THE REGISTRAR: Order, all rise. À l'ordre, levez-vous.

10 The Court has reconvened. Please be seated.
Good afternoon, Your Honour.

MR. DEARDON: Good afternoon, Your Honour.

Your Honour, I've handed you two ---

15 **M. RANCOURT:** Monsieur le juge, avant de commencer -- avant de recommencer, j'aimerais juste prendre une minute pour exprimer la raison de mon objection de la procédure de cet après-midi.

MR. DEARDON: No.

LA COUR: Non.

20 **M. RANCOURT:** Parce que ---

LA COUR: Non, Monsieur Rancourt, assoyez-vous. Vous avez eu votre temps et vos chances. Merci.

M. RANCOURT: Je n'ai pas pu présenter ---

LA COUR: Non.

25 **M. RANCOURT:** --- mes arguments.

LA COUR: Non. Vous avez eu la chance. J'ai déjà -- je vous ai averti plusieurs fois.

M. RANCOURT: Je sais même pas si mes affidavits sont admis.

30 **MR. DEARDON:** Your Honour, I'm going to start my argument now and I'm going to spend very little time on Mr. Rancourt's submission that there

should be a trial of an issue and then 99.9 percent of my time is going to be spent on the champerty motion itself.

So, Your Honour, you should have two compendium that we just handed up.

THE COURT: It's a question I have and that is: Has Mr. Rancourt almost abandoned his motion for the champerty motion because he's now saying there should be a trial which there will be a trial.

There will be a trial because, if it's to be determined as a trial of an issue -- let's assume that he's not as a trial of an issue but his defense presumably pleads champerty and maintenance; doesn't it in his defence?

MR. DEARDON: No, it's not a defence.

LA COUR: There's no motion to strike it out.

MR. DOODY: No, it's not a defence, Your Honour.

THE COURT: It's not pleaded as a defence?

MR. DOODY: Well, it's not a defence and it's not pleaded.

THE COURT: And it's not pleaded? Oh! O.k.

MR. DEARDON: He's pleaded a slap defence, you know, strategic lawsuit against public participation. There is no such defence in Ontario.

So -- and -- so Your Honour, what he has before you is a motion under 21.01(3)(d) as you pointed out this morning that it's an -- there's an abuse of process here based on a champertous agreement and that's the only circumstance when a stay or a dismissal might be considered when you

have champerty or -- when you have champerty in play.

5 So I've handed you, Your Honour, a preliminary matters compendium -- the blue book which should be just to your -- your left. I think. The thin book will be the preliminary matters.

10 So the rule he's -- he's seeking to have a trial of an issue on is found at Tab 3 of that compendium. It's Rule 37.3. So it's:

"A judge who hears a motion may ..."
and sub (b) is:

15 "Order the trial of an issue which such direction as are just and adjourn the motion to be disposed of by the trial judge."

20 So the motion you were hearing is -- is his Rule 21.01(3)(d), Abuse of Process Motion and, obviously, it's in your discretion whether you order the trial of an issue.

25 My submission, Your Honour, is what really is at play here is another delay tactic by Mr. Rancourt to try to prevent and avoid this Court determining in the near future this very serious accusation that he's made that there is a champertous agreement and there's an abuse of process going on between the University of Ottawa and Professor St. Lewis.

30 What's noteworthy, Your Honour, is that Mr. Rancourt bases his alleged conflicts in the evidence on transcripts that he cites only in his transcripts in his factum. You won't see any pages or question numbers referred to. I asked

him to give me the page numbers he was relying on and he ignored my e-mail.

5 But what's significant, Your Honour, is that these cross-examinations were conducted in April, seven months ago. During the May 4th case conference, before Justice Beaudoin, he never uttered a word that he would need a trial of an issue. And during the case conference before you, Your Honour, September the 27th, you, of course, recall that he never ever said that he needed a trial of an issue.

10 No, he waits until November the 30th when it -- the last day to file his factum in the champerty motion and ask the Court to make a trial of an issue to delay the day when a determination will be made as to when -- as to whether there is an abuse of process based on a champertous agreement.

15 My submission, Your Honour, is that when I -- when I take you through the evidence of President Rock and Dean Feldthusen and Professor St. Lewis when I'm arguing the main motion that you will come to the conclusion, in my respectful submission, that there is no conflict in the evidence whatsoever that would require a trial of an issue.

20 But I briefly wanted to just touch on two of the examples that he was giving you before the lunch break.

25 With Joanne St. Lewis, he spent a considerable amount of time about when she learned about his February 11th, 2011 'house

5
negro' article. That issue is not relevant. He
tried to ask questions during his cross-
examination of that e-mail string that he was
spending so much time on this morning with Lia
Tarachansky. It's found at Volume 1, pages
222/223 of his record.

10
And I just simply point out to the Court
though he somehow thinks this assists him as to
when Professor St. Lewis actually learned of his
'house negro' article.

The February 14, 2011 e-mail that Professor
St. Lewis sent to the Chief of Staff or the
President of U of O says:

15
"They are definitely reinforcing my decision
not to look at it."

Right there, she's saying she didn't look at it.

20
The fact is, Your Honour, that Professor St.
Lewis who did a Google search on April the 8th of
last year and that's when she discovered on the
front -- or the first page of her Google search
results that Mr. Rancourt had referred to her as
a 'house negro'.

25
And the part that he wouldn't read -- the
part of the transcript that he wouldn't read,
which is Volume 3, Tab 17 -- you don't need to
turn it up -- Volume 3, Tab 17, page 56 of
Professor St. Lewis' cross-examination transcript
says:

30
"I knew beyond a shadow of a doubt if I read
your blog post, I'd be changed forever. I
knew that reading anybody who would call me a
'house negro', anybody who had the level of

entity towards me that I didn't even know, I knew I was going to be reading something like toxic waste and I would never ever forget. I tried to put it off as long as was humanly possible to actually read the blog post. It was horrifying enough to know that it was on the first page of my Google search results without thinking that I was going to click on it. This was not -- you're framing it as if it's a matter of curiosity, somebody has said something about me, you're acting like: Oh! Why wouldn't you look?

Normal people would look. Normal people, Black people do not look forward to reading racist statements about themselves. They don't say: "Oh my goodness, it shocked a person who is not Black." So therefore, let me walk down the path and really experience it. When you read racist language, I can't begin to tell you how it's like. It can be like a body blow and I can tell you that when I finally read your blog post, I was disgusted and I was nauseous. I was actually nauseous.

So, no, I did not read it back in February 2011. I just didn't do it then. I didn't and I'm telling you that I couldn't read it until he told me ..."

The "he" being me, Your Honour.

So, Your Honour, there's no conflict in the evidence with respect to Joanne St. Lewis and with respect to Bruce Feldthusen, the Dean, now,

just -- if you could just make a note that in my factum, in paragraphs 112 and 113, I reproduce the re-examination of Bruce Feldthusen.

Now, I've already pointed out one attempt by Mr. Rancourt to not put the full evidence on the record and that was the corrected answer that Bruce Feldthusen gave a little later on in his cross-examination.

But here, in his re-examination, which you upheld, Your Honour, as proper re-examinations, the Dean testified that during the meeting with President Rock on April 15th, 2011, Professor St. Lewis made a request to Allan Rock that the University of Ottawa support her financially. That was the purpose of the meeting.

The Dean also requested that the university support Professor St. Lewis financially. That's question 223, page 49, of the Dean's re-examination.

And also in that re-examination, Your Honour, and this is from paragraph 113 of my factum, it's Question 220, page 48. The Dean testified that it was Professor St. Lewis who would consult Rick Deardon. As regard, he answered that:

"Mr. Rock was favourably disposed to Mr. Deardon as counsel"

The Dean was asked:

"Whose decision was it to select counsel to represent Professor St. Lewis?"

The Dean answered:

"Professor St. Lewis."

So there's no conflict in what the Dean testified

5 about and when I get into the evidence that
President Rock gave which I'm about to get into
now, Your Honour, there is also no conflict
whatsoever that would require a trial of the
issue. This is all in the mind of Mr. Rancourt
who just doesn't like the answers that he was
given by the people that attended the April 15th
meeting where the agreement was reached to fund
this lawsuit.

10 So, Your Honour, on my main argument, I'm
going to be referring to my factum.

And I'll give you an outline of my argument,
Your Honour.

15 **THE COURT:** The time limit --, I'm going to hold
you to the time limits that I attempted to hold
Mr. Rancourt to -- what are they? Just so we're
-- from your letter, I -- we're following those?

20 **MR. DEARDON:** I had an hour and 15 and I'm -- and
just so there's no claim of unfairness, I will
finish at 3:15.

THE COURT: Okay.

MR. DEARDON: Like I said in the letter.

THE COURT: Yes, that's fine.

25 So 3:15, we'll take a break. Mr. Doody will
be up at that point.

30 **MR. DEARDON:** So, Your Honour, you should have a
49-page green factum from me. It's that lengthy
because I've done my best to include most of the
evidence of the witnesses in this champerty
motion right in the factum and that also
expedites things considerably in terms of me
referring you there as opposed to taking you to

transcripts.

So the outline of my argument, Your Honour, the first point is I'm going to take you to the law of maintenance and champerty.

Yeah, you have a -- I should have mentioned that, Your Honour, you should have a 30-page -- a 30-tab compendium that I'm going to be referring to here ---

THE COURT: Yes.

MR. DEARDON: --- and then, my factum. So first point, your honour, the law of maintenance and champerty.

The second point is the elements of maintenance and this is important, Your Honour, the elements of maintenance. It's actually two-fold: One is motive.

And my submission to Your Honour is that there was no improper motive on the part of the University of Ottawa to agree to pay the legal fees for one of its employees to sue Mr. Rancourt with respect to work she did for the university at the request of the university.

So the first element of maintenance is: Is there an improper motive?

The second element of maintenance is: Was there officious intermeddling?

And my submission on that, Your Honour, it wasn't U of O that stirred up Professor St. Lewis to sue Mr. Rancourt, it was Mr. Rancourt that stirred up Professor St. Lewis to sue him for libel.

The third point of argument, Your Honour,

5 will be the champerty element. The champerty element is that there is an agreement. There has to be an agreement that he proves between the University of Ottawa and Professor St. Lewis to share in the proceeds or profits of this litigation and there is absolutely no such agreement.

10 And my fourth point, Your Honour, is the abuse of process element. To get a stay or a dismissal, there is the rare situation where, if you prove trafficking in litigation, then the Court can consider -- it's not necessarily has to -- but it is a circumstance where an action could be stayed if there was trafficking litigation.

15 And, in fact, that's what happened in *Operation One* -- and I'll be taking you to that case when I get to that.

20 So point one on the law, Your Honour. If you could turn to Tab 3 of the Compendium and this is an extract from Professor Fridman's book, Canadian Law of Torts, he gives a definition of "maintenance" and "champerty" and "maintenance" is the official intermeddling in the litigation of others for ---

25 **MR. DOODY:** Officious. Officious.

MR. DEARDON: Officious. What did I say?

MR. DOODY: Official.

30 **MR. DEARDON:** Official, no, officious intermeddling in the litigation of others for an improper motive when the maintainer has no personal interest in such litigation and the assistance which usually takes the form of

financial support is unjustified.

Champerty occurs when, in return for such support, the parties to the arrangement agree -- agree that any profits of the action will be shared between them.

Champerty is an aggravated or egregious form of maintenance in which there's the added element that the maintainer shares the profits of the litigation. Without maintenance, there can be no champerty.

And at Tab 4, Your Honour, you have an extract from the Perell and Morden text on the Law of Civil Procedure in Ontario and, if you turn to the second page of Tab 4, it should be page 73, it's the paragraph that starts: "The focus of attention ..."

"The focus of attention of maintenance is the officious intermeddler and the profiteer in another's litigation. The element of officious intermeddling which is encouraging litigation that the parties would not otherwise pursue must be present to constitute the tort. There is no maintenance unless there is an improper motive and there is no maintenance if the alleged maintainer has a legitimate reason or justification for assisting the litigant."

And my submission there, Your Honour, will be there was a perfectly legitimate reason for the University of Ottawa as the employer of Professor St. Lewis to fund this litigation which arises out of work that she did for the university at

the university's request.

Continuing the -- from Tab 4 of the
Compendium:

"The objection to the assistance is that the person providing it doing so without a proper purpose and is acting maliciously or to stir up strife. If there is an allegation of maintenance, the Court must carefully examine the conduct of the parties and the propriety of the motive of the alleged maintainer."

Now, Your Honour, I'm going to take you now to *Operation One* case which you'll find at Tab 7 of the Compendium. This is a decision of Justice Cullity and he sets out the law set down by the Court of Appeal in two cases: *the McYntire Estate* case and the *Buday* case.

But if you can turn to paragraph 30 on page 8 of Tab 7 of the Compendium, he sets out the appropriate passages from the *McYntire* case and the *Buday* case.

At paragraph 30, it starts:

"It is possible that some but not all proceedings that would be found to be champertous might -- might -- be held to be an abuse of process..."

And then, he quotes paragraphs 26 and 27 and 34 of the *McYntire* case and this is where Associate Chief Justice O'Connor held:

"Although the type of conduct that might constitute champerty and maintenance has evolved over time, the essential thrust of the two concepts has remained the same

for at least two centuries. Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes (litigation) of others in which the maintainer has no interest whatsoever and where the assistance he or she renders to one or the other parties is without justification or excuse. Champerty is an egregious form of maintenance in which there is the added element that the maintainer shares in the profits of the litigation. Importantly, without maintenance there can be no champerty: ... [27] The courts have made clear that a person's motive is a proper consideration and, indeed, determinative of the question whether conduct or an arrangement constitutes maintenance or champerty. It is only when a person has an improper motive which motive may include, but is not limited to, "officious intermeddling" or "stirring up strife", that a person will be found to be a maintainer."

Paragraph 32 deals with the *Buday* decision of the Court of Appeal:

"The Court considered the meaning and implications of the notions of 'officious intermeddling' and 'stirring up of strife'. In allowing an appeal from a decision that an agreement was champertous, the Court disagreed with the conclusion of the judge

of the first instance that it was not a necessary element of champerty that a person be encouraged to enforce rights he or she was not otherwise disposed to enforce."

Turning the page:

"Champerty has always been considered to be a particular form of maintenance under the authorities. For an agreement to be champertous, it must first of all -- it must have all the ingredients necessary to constitute maintenance. Therefore, the element of officious intermeddling, that is the stirring up of the parties to litigate in an endeavour to enforce rights they would not otherwise pursue, must be present."

So the element of officious intermeddling must be present.

Next:

"For champerty, whatever its historical origin, the authorities both English and Canadian have consistently treated champerty as a form of maintenance requiring proof not only of an agreement to share in the proceeds but also the element of encouraging litigations that the parties would not otherwise be disposed to commence."

And the last case I'll take you to, Your Honour, is at Tab 5. It's the *Stetson Oil* case and I take you to paragraph 11, at the bottom of the page:

"Two requirements are necessary for a finding of champerty. The first is that the

party must have an "improper motive" in maintaining the action. The second is that the plaintiff must be otherwise not disposed to enforce its legal rights against the defendant, but for the officious intermeddling of the maintainer. The absence of either of these elements is fatal to an allegation of maintenance and without maintenance there is no champerty."

And it's my submission, Your Honour, that the Defendant Rancourt has to prove the three elements: the maintenance element, the champerty element and the trafficking in litigation element and if he fails to prove any one of those three elements he loses.

And he hasn't proved any one of the three elements he's required to prove to have this Court dismiss or stay this libel action as an abuse of process.

Now, Your Honour, if I could ask you to turn to my factum at paragraph 46?

This is the section that deals with -- with being perfectly legitimate and justifiable for an employer to pay the legal costs of an employee's defamation action and the leading case on that, of course, is *The Church of Scientology* case involving Casey Hill when he was a Crown Attorney and he is now Mr. Justice Hill and I've set out paragraphs 70, 71 and 75 on page 15 of my factum.

The Church had submitted Casey Hill:

"... commenced the legal proceedings at the direction and with the financial support of

the Attorney General in order to vindicate the damage to the reputation of the Ministry resulted from criticism levelled at the conduct of one of its officials. It, therefore, contended that the action represents an effort by a government department to use the action of defamation to restrict and infringe the freedom of expression of the appellants ..."

the Church.

"These submissions cannot be accepted. They have no legal, evidentiary or logical basis of support."

according to the Supreme Court of Canada.

What was important, Your Honour, is what you see in paragraph 75 and that is apt to what Defendant Rancourt did to Professor St. Lewis.

The Church:

"... impugned the character, competence and integrity of Casey Hill, himself, and not that of the government. He, in turn, responded by instituting legal proceedings in his own capacity. There was no evidence that the Ministry of the Attorney General or the Government of Ontario required or even requested him to do so. Neither is there any indication that the Ministry controlled the conduct of the litigation in any way. Further, the fact that Casey Hill's suit may have been funded by the Ministry of the Attorney General does not alter his constitutional status or cloak his personal

action in the mantle of government action.”
In other words, he had a right to sue to clear
his name which he did.

Paragraph 49 of my factum, Your Honour,
summarizes the *Whitcombe v. Manderson* case,
decision of Justice Hourigan who dismissed a
motion brought by the intervenor, CCLA, to strike
the Statement of Claims on the grounds that a
county was funding a defamation litigation
against the Defendant to operate at a website
providing commentary on local government issues.

Justice Hourigan noted that the intervenor
in the action had been unable to cite any
Canadian authority where a court has ruled that a
government is prohibited from funding defamation
litigation commenced by a public servant and
relied upon the above passages of the Supreme
Court that I just quoted from the *Hill v. The
Church of Scientology* case.

And then, in paragraph 50 of the factum,
Your Honour, the decision of Justice Corbett in
Halton Hills. In paragraph 55, Justice Corbett
held:

“... it is permissible for public servants to
sue in defamation. Where the defamatory
comments have been made concerning the
public servant’s performance of his public
duties, it may be permissible for the state
to fund the lawsuit. The expenditure of
public money is a matter for which
government is responsible to the people.”

5 So, Your Honour, the 'house negro' articles in issue in this action published in February and May of 2011 are, according to the Defendant's Notice of Motion, criticisms of the Plaintiff's work for the university.

10 I've said -- his Notice of Motion is at Tab 8 of the Compendium, Your Honour. Tab 8, and if you look at the grounds, the first grounds states that the Plaintiff is tenured Assistant Professor in Law at the University of Ottawa. In paragraph 3, you'll see that the Notice claims that the U of O blog essentially including criticisms of the Plaintiff's work for the university.

15 And he makes the same concession in paragraph 4. It is a criticism of the Plaintiff's work for the university.

20 She's an employee who sought the financial assistance of her employer for work she did for the employer at the request of the employer.

25 And the justification for the funding, Your Honour, is found at Tab 9 of the Compendium which is a letter from David Scott to Mr. Rancourt of October 25th, 2011 and I'm looking at the third paragraph of Tab 9 of the Compendium of that letter.

Mr. Scott informs Mr. Rancourt:

30 "Indeed, the University of Ottawa's reimbursing Professor St. Lewis for her legal fees incurred in her defamation proceeding in the courts against you. Your defamatory remarks about Professor St. Lewis for occasions by work which she undertook at

the request of the university and in the course of her duties and responsibilities as an employee. Her efforts were not personal but in the interest of the university.

Furthermore, your outrageously racist attack upon her takes this case out of the ordinary and, in the view of the university, alone creates a moral obligation to provide support for her in the defence of her reputation."

So, Your Honour, the maintenance elements are, again, improper motive and officious -- the second element of that is officious intermeddling.

Dealing first with the evidence on no improper motive at all. There was a legitimate reason or justification for assisting Professor St. Lewis and you just saw it in David Scott's October 25th letter. There is no improper motive in an employer paying the legal costs of a libel action for an employee. I just took Your Honour to the law in *Church of Scientology, Halton Hills, Whitcombe*. It's nothing improper at all for an employer paying the legal costs of a libel action of an employee.

M. RANCOURT: Monsieur le juge, j'admets ce point-là. Monsieur Deardon n'a pas besoin de faire l'argument.

J'admets que, en soi ---

LA COUR: Oui.

M. RANCOURT: --- c'est correct pour un employeur de payer les frais légaux d'un employé.

La vraie question c'est maintenance et champartie.

LA COUR: Merci.

MR. DEARDON: Your Honour, so Allan Rock explained his motive in his affidavit and during his cross-examination and I'll take you to the factum that sets out President Rock's evidence.

If you could turn to paragraph 69 of the factum, Your Honour?

You'll see the passage I just read for you of the David Scott letter of October 25th and then, at paragraph 70, President Rock, in paragraph 6 of his affidavit, says he made the decision to pay the legal fees to sue the Defendant Rancourt for libel for the reasons set out in Mr. Scott's letter dated October 25th.

That's paragraph 6 of Mr. Rock's affidavit.

Paragraph 71, President Rock's affidavit states that this is Professor St. Lewis' libel action and only Professor St. Lewis provides instructions to her counsel:

"Professor St. Lewis is the Plaintiff in this action. It is her action. It is she who provides instructions to her counsel. The university has not and does not provide instructions to Professor St. Lewis' legal counsel."

If you go over to paragraph 74 of the factum, Your Honour, this again is just -- there's no improper motive for the decision to fund. President Rock testified on cross that Professor St. Lewis was in extreme anguish as a result of

the defamation which arose from something that she did at the request of the university. He tells Mr. Rancourt:

5 "If you want further elaboration on the reasoning for this decision, you can look at the exhibits to my affidavit which is the letter from David Scott. There was an important principle involved here which is the university standing with a member of its academic team who had been defamed arising from something she did at our request."

10 And the same evidence is given at paragraph 75 of the factum, Your Honour. President Rock testified:

15 "The principle here was that the university should stand behind a member of our academic staff who has been damaged and is extremely anguished because of the defamation that was made in circumstances that arose from a task that we asked her to take on."

20 Now, Compendium Tab 17, Your Honour, is an extract from the transcript of the cross-examination of Allan Rock. It's page 54 of his transcript at Question 286. He testifies:

25 "It seems to me that one of the responsibilities we have for our academic staff is that when they take on a task at our request, at the administration's request and in the course of doing that work in good faith they are defamed by somebody in an outrageously racist attack and they are

30

grievously hurt, both professionally and personally, to the point where they are in extreme anguish and that they feel the only way of recovering their reputation and their equilibrium is to commence a civil proceeding for damages for defamation then, in those circumstances, the university as a matter of principle ought to stand with them."

"And that ..."

he says in Question 288:

"... is the principle upon which I was acting in making this decision that is expressed very cogently in the letter sent by David Scott."

And the next tab, 18, Your Honour, of the Compendium, again from the cross-examination transcript of Allan Rock, at the bottom of that page -- so this is Question 384, at bottom of page 71 of the transcript, President Rock testifies that:

"... in late spring, I had a meeting with her and the Dean of the Common Law Section of the Faculty that she told me the reference of your blog that it was clear to me that it had cost her emotional anguish and emotional upset causing difficulties in her profession and personal life, that she had concluded ..."

So I'm at the top of page 72 of the transcript, Your Honour. This is President Rock testifying:

" ... that she had concluded that she really

had no alternative but to commence a defamation proceeding to restore her personal and professional reputation as a lawyer."

Question 385:

"... that she had asked the university to pay the fees that she would incur. The Dean was fully supportive and I made the decision and the reasons really are as set out in David Scott's letter."

And if you go to the next tab, Your Honour, Tab 19 of the Compendium, this was part of the transcript that Mr. Rancourt took you to this morning where President Rock tells him he cannot deny that he has a view about him:

"... but I can tell you under oath for the benefit of the Court that my view about you had nothing whatsoever to do with our motive in agreeing to fund this lawsuit. Nothing."

In Tab 24, Your Honour, is an extract of the cross of Dean Feldthusen at Question 163. So Tab 24, Question 163:

"Q. I want to go back to the meeting with Allan Rock now. Was there any talk of me, the person?

A. No, I don't think so.

Q. Is it that you don't remember or are you sure there was not?

A. Well, I definitely don't remember any talk about you, the person, other than in the context of authoring these remarks.

Q. So as far as what you heard there was no mention of me other than in that context?"

And the Dean answers:

"That's right."

That meeting, Your Honour, on April 15th was Professor St. Lewis coming to Allan Rock, not vice versa, and Professor St. Lewis telling Allan Rock how aggrieved she is with what she found out that she was referred to by the Defendant and it was her who had come to the conclusion that she had to bring legal action and it was her who went to Allan Rock for the purposes of asking the university to support her libel action financially as she was an employee and it, as an employer, and all of this arose out of work she did for the university.

There was no talk of Mr. Rancourt and talks and rants and stuff we were hearing from Mr. Rancourt this morning. This is what happened at the meeting.

So that's part of the evidence, Your Honour, on -- there was no improper motive. Simply put, this was an employer supporting an employee who was egregiously wounded by what the Defendant did to her.

The next part of the maintenance element is the official (sic) intermeddling. There's no officious intermeddling here by the University of Ottawa to get Professor St. Lewis to sue Mr. Rancourt, it was Professor Lewis' decision and

she had made that decision before she met Allan Rock on April the 15th.

It wasn't U of O who stirred up Professor St. Lewis to litigate against Mr. Rancourt, it was Mr. Rancourt that stirred her up to sue him.

So, Your Honour, if I could take you back to the factum, at paragraph 67, this refers to Paragraph 3 of Mr. Rock's affidavit and Professor St. Lewis had told President Rock that, after much consideration, she had concluded that she had no alternative but to commence a defamation action against the Defendant to restore her personal and professional reputation as a lawyer and a professor -- a law professor.

And at Paragraph 68 of the factum, it reproduces Paragraph 4 of Mr. Rock's affidavit. Professor St. Lewis asked that the university pay the fees that she would incur and the Dean was fully supportive of that request.

The cross-examination of Allan Rock which starts at Paragraph 72 of the factum, Your Honour, President Rock testified that:

"... she had arrived at the conclusion that the only course of action for her was to commence an action for defamation against the Defendant ..."

It's Joanne St. Lewis who arrived at that conclusion, it wasn't President Rock rooting her on.

And in Paragraph 73, Your Honour, I've reproduced a passage from Question 100:

"... who was telling me that she was deeply

upset and felt that she had no alternative but to have recourse to the courts to restore her reputation ..."

It was Professor St. Lewis telling that to Mr. Rock not Mr. Rock telling that to her.

And Paragraph 81 of the factum, Your Honour, which is on page 25, President Rock testified -- and you'll see this in the middle of that -- of that quote in Paragraph 81:

"... that person was in my office saying, as far as she was concerned, the only route to recovery was for her to commence a civil proceeding which she couldn't afford without our help and would the university stand behind her?"

So, Your Honour, the evidence of Professor St. Lewis starts at Paragraph 87 again under the point of there was no officious intermeddling here.

Professor St. Lewis says in Paragraph 2 of her affidavit that she adamantly denies:

"... that my libel action against the Defendant is based on a champertous agreement as alleged in his Notice of Motion. The Defendant has published false and defamatory statements and racial slurs about me that directly attack my personal reputation and my professional reputation as a lawyer and a law prof. My libel action against the Defendant relates only to his defamatory and racist publications and is solely about restoring my reputation."

And if you flip a page, Your Honour, at the top of page 28 of the factum, Paragraph 5 of Professor St. Lewis' affidavit says:

"This is devastating to my reputation. My action against the Defendant seeks an order requiring the Defendant to take down his false defamatory and racist publication. The Defendant refuses to do so."

And, at 89, Paragraph 6 of the affidavit, Professor St. Lewis attests that:

"I commenced this libel action in my personal capacity to restore my reputation and not as a representative of the University of Ottawa nor as a proxy for the University of Ottawa."

On cross-examination, Your Honour, Paragraphs 94 and 95 of the factum, when Professor St. Lewis met Mr. Rock on April the 15th to request for specific, she knew she wanted to initiate a legal action and wanted the university to pay the cost and she was absolutely certain about that.

And she gave three reasons to Mr. Rancourt during her cross-examination which you find in Paragraph 95. The first: because of the work that she had done:

"... and there was a responsibility of my employer to address the consequences. In the meeting with the way I framed it in the meeting to the President in the presence of Stéphane Émard-Chabot who is the Chief of Staff of President Rock and Bruce Feldthusen was that I appeared to be collateral damage

5 since I didn't know you in what seemed to be an ongoing battle that you had with the university and, yet, you were choosing to savage my reputation and to attack me personally as part of this and they bore a responsibility for that.

10 The second reason is because there is nothing unusual about this in the context of other defamation actions. Employees have been supported in their defamation actions by their employers and I was aware of that. And I think the third and in some ways really most important: to call a Black person a 'house negro' for work they did is bad enough but, in the present Canadian context, the Black people in academia is really and actually to profile Black people of the University of Ottawa it's highly problematic for us to be vulnerable to these kinds of racial slurs in the context of our work and to find our reputations savaged without recourse and, in my view, there is an outstanding responsibility of employers in that context not just of the specific individual but of the broader question of diversity, antiracism and transforming the academy, I think, it's absolutely important."

30 And Professor St. Lewis deals with her barrister's oath that she took to not commit champerty that you'll find at Tab 22, Your Honour, of the Compendium. You need not turn it

up but Tab 22 of the Compendium, page 124 of her transcript of the cross-examination, she testifies that she took that oath as a barrister in 1997 and in that she was not allowed to commit champerty but that's what he is accusing her of.

The Dean's evidence, Your Honour, as set out at Paragraph ---

THE COURT: I think there must be an error there:

"... I'm supposed to be foresworn and have committed champerty and maintenance ..."

That's -- I presume it's:

"... foresworn and not -- not committed ..."

MR. DEARDON: I think what she's saying there, Your Honour, is that he -- Mr. Rancourt is accusing her of committing champerty.

M. RANCOURT: Non, I think it means literally what it says.

MR. DEARDON: ... interruption.

THE COURT: Okay.

MR. DEARDON: At any rate, the point is she took a barrister's oath in 1997 to not commit champerty and maintenance. We are all absolutely clear as we stand here in this courtroom he is accusing her of that.

So, Your Honour, the evidence of Dean Feldthusen I've set out at paragraphs 104, 105 and 107 of the factum.

Again, on no -- no officious interference, the Dean in paragraph 3 of his affidavit which I set out in paragraph 104 of the factum says during the meeting with Professor St. Lewis, she informed Dean Feldthusen that she was going to

sue the Defendant for defamation. This is the April 11th meeting, okay, before the met with Allan Rock.

Dean Feldthusen recommended that Professor St. Lewis retain Richard Deardon at Gowling's. They decided to meet with the University of Ottawa President Allan Rock to request that the University of Ottawa pay the legal cost for Professor St. Lewis to sue the Defendant for libel.

At paragraph 105, Professor St. Lewis and the Dean met with President Rock, informed him of the Defendant's defamatory publication. Professor St. Lewis informed President Rock that she was going to sue the Defendant and requested that the university pay for her legal cost.

During that meeting, President Rock agreed to pay for Professor St. Lewis' legal costs. That's paragraph 4 of Dean Feldthusen's affidavit.

So the conclusion, Your Honour, on the elements of maintenance, in my respectful submission, there isn't a scintilla of evidence of officious intermeddling by the University of Ottawa. It was Professor St. Lewis that went to Allan Rock to tell him that she was suing Mr. Rancourt for libel and wanted U of O to pay the legals because it arose out of work she did for the university.

There isn't a scintilla of evidence of improper motive either. The Plaintiff and the Dean -- Professor St. Lewis and the Dean, they

5 arranged the meeting with the President. It wasn't the President calling Professor St. Lewis and saying: "What do you want to do about this February 11th 'house negro' article?", the Plaintiff asked to see President Rock with the Dean. They had the meeting. There was a legitimate and justifiable reason for U of O to agree to the Plaintiff's request that they fund this lawsuit.

10 The next point, Your Honour, is the champerty element. In addition to having to prove the maintenance elements, the Defendant must also prove that there was an agreement between U of O and Professor St. Lewis to share in the proceeds or the profits.

15 There is no such agreement, Your Honour.
M. RANCOURT: J'ai une objection pour les faits qui viennent d'être représentés que je pense qui ne sont pas corrects, monsieur le juge.

20 Vous m'avez dit que les objections étaient permises quand il y a un fait qui ---

LA COUR: Oui, qui est fausse.

M. RANCOURT: --- qui dit qui est faux.

LA COUR: Oui.

25 **M. RANCOURT:** Et Monsieur Deardon vient de dire que ---

MR. DEARDON: No, Your Honour, he has a reply because I'm on the clock.

M. RANCOURT: C'est une objection ---

30 **THE COURT:** Okay ---

M. RANCOURT: --- par rapport à une fausseté ---

MR. DEARDON: No, do it in your reply.

M. RANCOURT: --- qui vient d'être dit.

Monsieur Deardon a fait plusieurs objections de ce type-là.

THE COURT: I'll let him object. He's objected saying this is not -- not accurate.

Quoi?

M. RANCOURT: C'est ça, il y a quelque chose de faux qui vient d'être dit.

LA COUR: Oui.

M. RANCOURT: Monsieur Deardon a dit que, ensemble, Bruce Feldthusen et Joanne St. Lewis ont arrangé le meeting avec Allan Rock.

Et j'ai ici un document qui montre -- et je peux vous le signaler -- que c'est Bruce Feldthusen et son assistant dans la Faculté qui a fait la demande à Allan Rock sans que Madame St. Lewis soit en 'cc' de cette demande, que l'arrangement a été fait entre le Doyen et le bureau d'Allan Rock et ensuite, seulement ensuite, la plaignante a été informée de l'heure de ce meeting.

Donc, c'est faux de dire que les deux ensemble ont fait cette demande. C'est clairement le Doyen qui a arrangé le meeting et je peux vous le signaler exactement le document qui montre précisément ça.

MR. DEARDON: No, this is reply.

LA COUR: C'est bien. C'est bien, j'ai compris votre ---

M. RANCOURT: Merci.

LA COUR: --- votre objection.

So he's objecting to the statement that it was Joanne St. Lewis and the Dean and says that the meeting was arranged by the Dean.

MR. DEARDON: Yeah, he's splitting, Your Honour.

April the -- so April the 8th is a Friday; okay?

THE COURT: Okay.

MR. DEARDON: And that's when Professor St. Lewis discovers on the Google search the 'house negro' article written by the Defendant.

THE COURT: Okay.

MR. DEARDON: She goes immediately to find the Dean, he's not in on Friday, April the 8th, so she does find him first thing on Monday morning, April the 11th and they both agreed -- first of all, the Dean's evidence is it was Joanne who was telling him she's going to sue and they both agreed: We need to meet the President.

And that it was the Dean's assistant -- who sends an e-mail ---

THE COURT: He called up and arranged an meeting.

MR. DEARDON: --- who sends an e-mail to President Rock's office to see if they could meet -- if he was available for a meeting and gave certain dates.

And the date that was -- that came back was Friday, April 15th.

So the Monday is when the request went in. It was their request. I mean, it went via the Dean's assistant but it was their request.

And my point on that is simply it's not Allan Rock that's running out trying to get

Joanne St. Lewis to bring a libel action against the Defendant Rancourt, they went to him on April 15th. She put to him that she had no choice but to sue and would they fund it because she did it as an employee for the university and the agreement was reached.

M. RANCOURT: C'est faux ---

MR. DEARDON: The next point ---

M. RANCOURT: C'est faux, monsieur le juge.

MR. DEARDON: No, just sit down ---

M. RANCOURT: C'est une fausseté qui a été ---

LA COUR: Vous aurez votre chance -- o.k., j'ai -- j'ai eu votre ---

M. RANCOURT: Mais là, j'ai une objection de fausseté parce que le document que je veux vous montrer montre clairement, noir sur blanc, que la présence de Joanne St. Lewis est optionnelle. Ils utilisent le mot 'optionnelle' dans la rencontre et je veux vous montrer ce document-là parce que ce que Monsieur Deardon est en train de faire ---

LA COUR: O.k., il faut faire une note -- il faut faire une note parce que vous pouvez le faire en réplique. O.k.?

MR. DEARDON: So, Your Honour, we're on the point of the champerty element which must be agreement to share in the proceeds or the profits of the litigation and -- and what Mr. Rancourt is submitting is that proceeds or profits from the litigation is what's in paragraph ---

THE COURT: Half of the punitive damages will be given to a charity possibly ---

MR. DEARDON: Yeah, you'll find ---

THE COURT: --- or maybe ---

MR. DEARDON: Yeah, paragraph 60 of the Statement of Claim, Your Honour, is set out at Tab 13 of the Compendium.

THE COURT: Tab 16?

MR. DEARDON: Tab 13 of the Compendium, paragraph 60 of the Statement of Claim.

That's the sole evidence that he has that there is somehow a sharing of the proceeds or the profits of this litigation; what was pleaded in paragraph 6 -- 60 which is the potential that punitive damages might be awarded against the Defendant and that she will donate half of the punitive damages to the "Daniel Glover 'Routes to Freedom' Graduate Law Students Scholarship".

M. RANCOURT: C'est faux, c'est pas ---

MR. DEARDON: Paragraph ---

M. RANCOURT: C'est faux encore.

MR. DEARDON: Will you sit ---

M. RANCOURT: Il y a des faussetés ---

MR. DEARDON: --- down, please?

M. RANCOURT: Il y a des faussetés qui sont dits.

THE COURT: Let me deal with that, Mr. ---

M. RANCOURT: Je m'objecte aux faussetés

MR. DEARDON: Sorry, Your Honour.

THE COURT: I think comments to come to me ---

MR. DEARDON: I'm sorry -- yeah.

THE COURT: --- and I will direct ---

MR. DEARDON: My apologies.

THE COURT: --- how they go back.

M. RANCOURT: Merci, monsieur le juge.

Donc, il y a -- il y a une fausseté.
Monsieur Deardon vient de dire que la seule
évidence que j'ai c'est ce paragraphe dans le
'Statement of Claim' comme quoi il y a paiement.
C'est faux parce que, dans les procès-verbaux, il
y a le Président Allan Rock qui admet qu'il
connaît ce paragraphe-là et qu'y dit même qu'il
serait heureux de recevoir cet argent-là. Il est
toujours heureux de recevoir des -- des bourses
pour les étudiants.

Il y a un énoncé dans le procès-verbal de
Allan Rock qui dit ça.

LA COUR: Il concède que ça c'est un arrangement

M. RANCOURT: Et que il serait heureux de
recevoir un tel argent.

LA COUR: Merci.

MR. DEARDON: He's completely misrepresenting the
evidence plus that was reply and a needless
interruption.

Your Honour, we're dealing with paragraph 60
of the Statement of Claim. If you look at Tab
10, I have Professor St. Lewis' affidavit in Tab
10 from the Compendium and I'm asking you to turn
to the last page which is paragraph 24 which
deals with paragraph 60 of the Statement of
Claim.

Paragraph 24 says:

"The potential donation to the scholarship
was my idea and the inclusion of paragraph
60 in the Statement of Claim was solely my
decision. The potential donation reflected

in paragraph 60 in the Statement of Claim was never suggested by anyone at the University of Ottawa."

Paragraph 25:

"The reason I will donate half of any punitive damages that may be awarded against the Defendant to "Danny Glover 'Routes to Freedom' Graduate Law Students Scholarship Fund" is to create a record that the Defendant was held to account to the Black community for his disruptive use of Black History Month and for his racial slur that I acted as a 'house negro' to the President of the University of Ottawa."

If you go back to the factum, Your Honour, paragraph 132, Professor St. Lewis said at paragraph 132 of the factum which sets out Question 255:

"My decision in the Statement of Claim has nothing to do with being authorized, it was a determination of what I wished to do with my damages and it did not require authorization from anyone and I did not consult anyone. And the only person I spoke to was my counsel."

The next paragraph, 133, at Question 256:

"Was Mr. Rock involved in any way in this action?

A. What action?

Q. I mean the legal action?

A. The defamation question?

Q. I'm sorry, I mean including paragraph 60

of your Statement of Claim.

A. No, he was not.

He wasn't involved in any way with paragraph 60."

Now, if you turn the page, Your Honour, of the factum so that the top of page 40, Question 414:

"Q. Ms. St. Lewis, when did you first get the idea to give part of the punitive damages if they were awarded to the Danny Glover Scholarship?

A. At the time that we were drafting the Statement of Claim.

Q. Did anyone suggest this idea to you?

A. Nobody.

Q. I don't mean a professional colleague but I mean anybody at all?

A. I'm saying not a soul breathing."

President Rock's evidence, Your Honour, was set out at paragraphs 135 through to 148 of the factum.

Paragraph 9 of his affidavit says he never discussed this aspect of the matter with Professor St. Lewis. That's in paragraph 135.

The decision to reimburse legal fees had nothing to do with her intention to donate a portion of any eventual award to a scholarship fund. He had no idea.

You'll see in paragraph 10 of his affidavit he had no idea that she intended to donate any portion of damages that may be awarded to the scholarship fund.

And at the Compendium, Tab 27, Your Honour, this is an extract from the transcript of Allan Rock where, at Question 237, the Defendant puts to him that:

"... one of the circumstances is that the university was going to possibly share in the proceeds of the litigation and that money could possibly be given to a scholarship?

A. No.

Q. Sorry?

A. I said 'no'. Are you having difficulty hearing?

Q. No, I mean, was that one of your considerations?

A. No.

Q. But you knew about that time -- at the time of the meeting?

A. No.

Q. Because you only read the Statement of Claim later and -- and is -- when you found out; is that right?

A. In fact, I think I've sworn to that. If you look at paragraphs 9 and 10, you will see. You capture the essence of what I've sworn in those paragraphs.

There was no discussion at the meeting of April 15th about the university receiving any proceeds of the litigation directly or indirectly.

Q. Would that have been a consideration in your decision to fund?

A. No.

Q. It would not have made any difference to you?

A. No."

Tab 28 of the Compendium, Your Honour, Question 438, Allan Rock gives the answer:

"No such agreement was ever sought or given."

And at Question 440, President Rock testifies:

"Neither I nor the university had anything to do with that pleading, nothing to do with the idea. No idea was even in the Plaintiff's mind until we read it in the Statement of Claim."

And then, I -- also, Your Honour, if you want to make a note, there's further evidence at -- that I've got in paragraphs 145 through to 147 of the factum on this aspect.

And the last piece of evidence on this point of whether there was an agreement to share proceeds, Your Honour, is Tab 30 of the Compendium. It's an extract from Dean Feldthusen's cross-examination. It's Question 158 and 159, right at the bottom of page 36 of his transcript:

"Q. Were you aware of it or become aware of it at your meeting with the President of April 15, 2011? Were you aware of it then?

A. Oh no.

Q. Was it discussed at that meeting?

A. No."

The 'it' being as you see it from Question 157, Your Honour, the -- that proceeds from the damages would be awarded or would be donated to the university.

So, Your Honour, champerty requires that there be an agreement that U of O as the alleged maintainer would share in the proceeds of this libel action and there is no such agreement.

THE COURT: Just remind me, on the *Casey Hill*, the 800 and some thousand dollars -- was it 800 and 400 was the amount ---

MR. DEARDON: He got 1.6 million total.

THE COURT: I think it was 1.6 -- 1.4. Wasn't it Manning was ordered to pay about 400,000 and the Church about 800,000?

MR. DEARDON: It could ---

THE COURT: Probably with -- numbers like that are in my ...

Was any of that -- was that punitive damages or were those ---

MR. DEARDON: Just ---

THE COURT: Were those other damages.

MR. DEARDON: No, there was generals, aggravated and punitives and, if I recall, most of it was punitives.

THE COURT: Most of those numbers were punitives?

MR. DEARDON: Punitives.

THE COURT: Okay.

(SHORT PAUSE)

MR. DEARDON: I think it was close to a million in punitives against the Church, Your Honour.

But the point I'm making on the second element ---

THE COURT: Punitives could be substantial in this particular lawsuit if that's your pleading.

Is that your pleading? Is that the -- the ---

MR. DOODY: The general damages, Your Honour, in the *Hill* case were 300,000. Scientology alone was found libel for aggravated damages of 500,000 and punitive damages of 800,000.

THE COURT: Okay.

MR. DOODY: And that's from the ---

M. RANCOURT: Monsieur le juge, juste pour clarifier les -- les informations, dans le 'Statement of Claim' de mon opposant, ils demandent 250,000\$ en 'punitive damages'.

MR. DEARDON: Yes, 500,000 in generals, Your Honour, 250,000 aggravated, 250,000 punitives.

THE COURT: Thank you.

MR. DEARDON: So, Your Honour, my submission is that paragraph 60 of the Statement of Claim most certainly isn't an agreement to share in the proceeds. U of O wasn't even aware of paragraph 60. Allan Rock was not aware of paragraph 60.

And let's not lose sight of what paragraph 60 is. It's a potential donation from a potential punitive damages award. It's not a contractual obligation. She could amend her Statement of Claim right now and delete paragraph 60.

THE COURT: There's not agreements?

MR. DEARDON: There's no agreement whatsoever.

THE COURT: No agreement to say: We'll share whatever ---

MR. DEARDON: Yeah.

THE COURT: --- percent.

MR. DEARDON: April the 15th is when the agreement was reached upon and there was no discussion whatsoever and we see that from the evidence I gave. There's no doubt about it. There was no discussion about any donation to a scholarship at all.

That comes from all three people that were at that meeting.

But paragraph 60 isn't a promise. It's not a contractual agreement, it's -- it's in there for the reason that Joanne St. Lewis said in paragraph 25 of her affidavit. It was solely her decision for the benefit of students, of African students. That's who it was for the benefit of.

And the absence of that agreement to share in proceeds, Your Honour, is fatal to the motion.

Now, the third point, Your Honour, is the abuse ---

THE COURT: While we're on it, even if there was maintenance only, would that not also be fatal? Do you have to have champerty?

MR. DEARDON: Oh yeah.

THE COURT: Or can maintenance on itself be an abuse?

MR. DEARDON: No.

THE COURT: You might have ---

MR. DEARDON: He has to -- and I'm going to get into *Operation One* right now.

5 It's rare to start with the Courts would even consider striking a claim on the basis of abuse of process because there's a champertous agreement. But one thing it is not unclear at all, Your Honour, is that you have to have the maintenance, you have to have the champerty and you have to have the trafficking in litigation. He needs all three and if he doesn't have all three, he loses.

10 **M. RANCOURT:** Monsieur le juge ---

MR. DEARDON: Will you, please ---

M. RANCOURT: C'est une fiction légale ---

MR. DEARDON: Your Honour, please have him stop interrupting.

15 **LA COUR:** Non, non.

M. RANCOURT: --- ce que Monsieur Deardon est en train de -- de transmettre.

LA COUR: Ça c'est argument.

M. RANCOURT: C'est une fiction totale.

20 **LA COUR:** Vous avez ---

M. RANCOURT: Inconsistant avec le -- la loi.

LA COUR: Vous avez réplique pour clarifier.

MR. DEARDON: Your Honour -- and I hope I'm getting at least an extra five minutes from dealing with Mr. Rancourt standing up.

25
30 This is -- it's important for Your Honour to know what the law is and you'll see it now. Mr. Rancourt can interpret it the way he pleases but he's not interpreting it correctly, in my respectful submission.

So let's go to *Operation* -- back to *Operation One* which is at Tab 7 of the Compendium

and I'm asking you to turn up paragraph 44, page 13 of that decision, Your Honour.

So at paragraph 44, Justice Cullity notes that Justice Blair in a Divisional Court case where he did give leave mentioned that:

"... interesting and hitherto unexamined issue, in Ontario, ... whether or not the Superior Court in Ontario has jurisdiction to stay a proceeding on the ground that it is being maintained through a champertous arrangement".

And then, Justice Cullity, at paragraph 45, says that the question has been considered by three decisions of the Court of Appeal in England; and here's what's important, after he cites those decisions, he says:

"In each of these cases it was accepted that litigation pursuant to a champertous agreement could, but would not necessarily, constitute an abuse of process. In each of them, the court declined to find that the agreements, if champertous, would be abusive."

So you need a lot more than just the champerty which, you know, there was officious intermeddling, there was the improper motive, there was an agreement to share in the proceeds, you need trafficking in litigation.

And that's at the bottom of the page, Your Honour. You see:

"Abuse of the court's process can take many forms and may include a combination of two

5 or more strands of abuse which might not
individually result in a stay. Trafficking
in litigation is, by the very use of the
word "trafficking" something which is
objectionable and may amount to or
contribute to an abuse of the process. We
think that it is undesirable to try to
define in different words what would
constitute trafficking in litigation. It
10 seems to us to connote unjustified buying
and selling of rights to litigation where
the purchaser has no proper reason to be
concerned with the litigation."

Paragraph 46:

15 " Although these more recent English
authorities were not referred to at the
hearing of the motions, the reasoning of
Morritt L.J. supports the submission of
defendant's counsel that a conclusion that
20 the proceedings involved "trafficking in
litigation" could justify a finding of abuse
of process. This submission would, I
believe, be consistent with the analysis ..."
of the Court of Appeal in the *McIntyre* case.

25 Paragraph 47 and I'm dropping down about
five lines, Your Honour:

30 "If it would require a distinction to be
drawn between degrees of abuse, such a
distinction would appear to be implicit in
the passage I have quoted from the judgment
of Morritt L.J. [...] where it was accepted
that trafficking in litigation - that

connotes " an unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation" - may constitute an abuse of process while champerty that fell short of this would not."

M. RANCOURT: Monsieur le juge ---

MR. DEARDON: Then, if you go to paragraph 54 ---

LA COUR: Non, non, attends ---

M. RANCOURT: --- mais là, Monsieur Deardon a fait les mêmes objections, il ---

LA COUR: Non, non. Non, non, non, Monsieur Rancourt ---

M. RANCOURT: Il ignore le paragraphe clé.

LA COUR: Ça c'est des soumissions sur des questions de droit. Ça c'est purement des représentations. C'est pas des faits qui se sont -- pas exacts ou sont ---

M. RANCOURT: C'est une méreprésentation -- c'est devant nous, le paragraphe 45 dit le contraire de ce qu'il est en train de dire.

LA COUR: Vous avez, en réplique, de me clarifier sur les points légaux.

M. RANCOURT: D'ailleurs, j'ai ---

LA COUR: C'est là le début ---

M. RANCOURT: J'ai lu ça en détail au début et vous avez trouvé que la maintenance seule était suffisante ---

LA COUR: Non, j'ai ---

M. RANCOURT: --- pour un abus de processus.

Vous avez dit ça -- vous avez dit: « Je vous --

je l'admets » et j'ai arrêté d'argumenter la question parce que vous avez ---

LA COUR: Non, non, non, non, c'est ---

M. RANCOURT: --- trouvé ça.

LA COUR: C'est deux choses séparées, ce que j'ai bien compris.

J'ai posé la même question à Maître Deardon. J'ai posé la même question tantôt: Est-ce que maintenance -- la maintenance seule et il est en train de me répondre.

M. RANCOURT: D'accord, mais vous avez accepté devant moi ---

LA COUR: Non, non, non, non. Non, non. Non, non. C'est j'ai -- aucune décision est prise tant que j'ai pas toute entendu les deux parties. C'est sûr. C'est sûr.

M. RANCOURT: D'accord.

MR. DEARDON: For the record, Your Honour, all you told him this morning was that, essentially, champerty ---

THE COURT: There was ---

MR. DEARDON: --- champerty was an egregious form of maintenance.

THE COURT: That was what I understood I said but ---

MR. DEARDON: That's what I understood you said ---

THE COURT: --- but I -- I've not formally -- finally decided as I said to Mr. Rancourt until I've heard you in full, Mr. Doody and Mr. Rancourt in reply.

M. RANCOURT: Mais ---

THE COURT: One way or the other ---

M. RANCOURT: --- Monsieur Deardon a un 'smart pen', il va pouvoir nous dire exactement ce que vous avez dit.

LA COUR: Non, non, non, non, non, non, non.

M. RANCOURT: Il va pouvoir corriger ce qu'il vient de -- de dire que vous avez dit.

LA COUR: De toute façon, I -- if I had said that I was deciding something, that is not accurate. Certainly, it was not my intention.

MR. DEARDON: No, you didn't -- you didn't do that, Your Honour.

THE COURT: I don't think I decided.

MR. DEARDON: You didn't do that. He ---

THE COURT: I do try to clarify my understandings of -- avec vous ---

M. RANCOURT: Oui.

LA COUR: --- avec Monsieur Deardon.

J'ai posé la même question -- because it's -- it's the question or one of the questions.

M. RANCOURT: O.k.

LA COUR: Mais je vais vous entendre à la fin.

MR. DEARDON: Champerty is an aggravated or egregious form of maintenance. It's just a non-issue that that's the law.

THE COURT: No, that's what I understood, but ---

MR. DEARDON: And that's all you said.

THE COURT: But my question to you which I think you're answering was: Was maintenance alone enough or did you need champerty?

MR. DEARDON: Oh, he -- he needs more -- he needs more.

THE COURT: And you said and ---

MR. DEARDON: And trafficking in litigation.

THE COURT: Okay. That's what ---

MR. DEARDON: Yeah.

THE COURT: That's what you're clarifying.
That's your submission.

Monsieur Rancourt is saying that's not the case but I'll hear you in reply on that.

MR. DEARDON: Yeah, he doesn't understand the law.

And, by the way, my smart pen is sick. It's out of battery so it's not recording anything.

THE COURT: Oh well.

MR. DEARDON: So we're on page 16, Your Honour, of *Operation One*. I just want the last -- okay, so -- and, Your Honour, it is rare. This is completely rare that somebody would be moving to strike out a claim as an abuse of process based on a champertous agreement and that's what Justice Cullity is dealing with here.

And so what he's saying is, even if you had the champerty, it doesn't necessarily mean it's going to lead you to abuse of process and that you would just stay or dismiss an action.

We have, at the top of page 16 of the *Operation One* decision, Justice Cullity, at the fourth line from the top, talks of:

"... the "overriding purpose of the common law of champerty" - that the court should refuse to adjudicate disputes where there is no evidence that litigation is anything more than a profit-making enterprise by a

plaintiff who had no pre-existing interest in the subject matter of the dispute and purchased the claims from a person who had shown no intention of enforcing them."

And then, if you drop down to the last three lines -- fourth lines of paragraph 53:

"In cases of champerty - such as this - the question whether the aggrieved party had shown an interest in commencing litigation, or would have been likely to do so without the officious intermeddling of the maintainer, may be material on the issue of abuse of process. If a line is to be drawn, I am satisfied that the facts of this case fall on the side that requires a stay to be granted."

and he says why in paragraph 54:

"... was not merely a case of officious intermeddling by persons who had no pre-existing interest in the right of action, it was an egregious attempt to "traffic" in litigation ..."

What they had done here, Your Honour, is they bought the litigation.

There is no buying or selling of litigation in this case before you. U of O has no control whatsoever over Professor St. Lewis' conduct of her libel action whereas that was not the case in *Operation One* and, if I could ask Your Honour to just make a note in terms of choice of counsel and who was instructing counsel which is clearly it is just Joanne St. Lewis instructing me.

5 If you note factum paragraph 71, 77, 101 and 113, you have the evidence on choice of counsel and it was always Joanne St. Lewis' decision to choose counsel and it is only her that instructs -- instructs counsel.

10 The evidence that I took you through, Your Honour, with respect to no officious interference and that it was Joanne St. Lewis' decision to commence this libel action that is material as Justice Cullity says in paragraph 53.

15 Like, she did have -- made the decision that she was going to sue so there can't be an abuse of process found in those factual situation. There isn't a scintilla of evidence of trafficking in litigation here. There's no buying or selling of rights to litigation.

THE REGISTRAR: It's past 3:15, Your Honour.

MR. DEARDON: Yes.

20 To sum up, Your Honour, in conclusion, he needs all three. He needs the maintenance which is officious intermeddling and improper motive, he needs the champerty element which is the agreement to share in the proceeds or the profits of this libel action and he needs trafficking in litigation. He has to prove all three of those. If he fails on any one of them, it's fatal as you recall from the *Stetson Oil* case.

25
30 If he doesn't prove to you that there was officious intermeddling and an improper motive that there was an agreement to share in the profits and that there was buying and selling of

litigation, he loses and this motion must be dismissed.

Subject to any questions Your Honour has, that completes my submissions.

THE COURT: Thank you.

We'll take a break ---

M. RANCOURT: Est-ce qu'on pourrait un 'break', que j'allais dire, pour la toilette.

LA COUR: Oui, on va prendre -- on va prendre un 'break'. On va -- we'll take 15 minutes.

THE REGISTRAR: Order. All rise. À l'ordre. Levez-vous.

--- L'audience est suspendue à 15h22

--- L'audience est reprise à 15h41

THE COURT: Mr. Doody?

MR. DOODY: Thank you, Your Honour.

THE COURT: You here on first base or on second base but, anyway, you're up.

MR. DOODY: Well, I'm up but we'll see what base I get to.

Your Honour, I ---

THE COURT: Just before we start, your time limits, Mr. ---

MR. DOODY: We had agreed that I would have an hour and a quarter but Mr. Rancourt was promised 15 minutes in reply so I will do my absolute utmost to finish by a quarter to five, Your Honour.

THE COURT: Okay.

We've lost our Registrar so my timekeeper is gone.

(SHORT PAUSE)

THE COURT: We have -- our Registrar is back.
Okay.

MR. DOODY: Your Honour, I propose to deal
firstly with the preliminary issues, very briefly
with the -- with the request for a trial of an
issue and, secondly, to deal with the
admissibility of the two affidavits of April 23rd
and May 23rd.

And then, I will deal with the substantive
issues on the motion although I do not intend to,
as much as possible, not retread the same ground
that my friend, Mr. Deardon, has trodden.

So if I could deal, first, just very
briefly, with the suggestion that there be a
trial of an issue?

Your Honour, this is truly an eleventh hour
request and, in my submission, given the history
of attempts to avoid a day of reckoning in this
matter, it should be seen for what it is and that
is exactly the same thing: an attempt to avoid
the judgment day.

Mr. Rancourt brought this motion in January
of 2012, almost a year -- almost a year ago,
about 11 months ago, and claimed that he wanted
the Court to decide by way of motion and by way
of affidavit evidence whether or not there was a
champerty and maintenance present such that the
action should be stayed or dismissed as an abuse
of process.

Throughout the entire evidentiary process,
since that time, with a plethora of motions -- I
believe there are 11 or 12 motions brought by Mr.

5 Rancourt in this motion alone, that was 11 or 12
interlocutory motions within this motion -- there
has not been a whisper or a hint of a request to
have a trial of an issue. We knew nothing about
it until the 30th of November, less than two
weeks ago, when his factum was served, nor is
there a formal motion seeking it nor does he
elucidate precisely what the issue is that he
wants tried.

10 Trial of an issue is usually, Your Honour,
an attempt or a request to have the Court hear
viva voce evidence in what would otherwise be
decided by way of affidavits to hear *viva voce*
evidence to determine a discreet issue of fact
15 and Mr. Rancourt has not even enunciated what the
issue or issues of fact are.

And, in my respectful submission, this
request coming at the 11th hour ought to be
rejected and I say, in any event, there is
absolutely no contradictory evidence on the
20 issues of importance in this motion.

Turning then to the admissibility of the
affidavits of April 23rd and May 23rd -- and, Your
Honour, I'm going to be looking or asking you to
look, rather, over the course of the afternoon --
25 I'm not as good an advocate as my friend, Mr.
Deardon, so I don't -- and I'm not as organized
as him in any event so I don't have compendium or
compendia.

30 I will be referring to Volumes 1, 3 and I
believe 4 of Mr. Rancourt's Motion Record.

5 I also have a Supplementary Responding Motion Record from the university. It's got a blue backing and a white cover and it's about two inches thick. It has 11 tabs and it's called "Supplementary Responding Motion Record of the University of Ottawa".

Does your Honour have that one?

THE COURT: So I have ---

MR. DOODY: Do you have the Notice itself?

10 **THE COURT:** I had them in piles. It seems to be my system of organisation but -- so your pile ---

MR. DOODY: Yes ---

THE COURT: "Responding Motion Record" and you have a Supplementary Responding ---

15 **MR. DOODY:** That's right.

THE COURT: --- Record and ---

MR. DOODY: O.k., great.

THE COURT: --- a green one, well, your Book of Authorities; okay?

20 **MR. DOODY:** That's right.

And my factum, Your Honour, which is the -- I think you have it in your hand.

THE COURT: Yes.

MR. DOODY: Okay, thank you.

25 So if I could ask you to turn up Volume 1 of Mr. Rancourt's Motion Record, we're talking -- I intend to make submissions now about the admissibility of two affidavits: the first being the affidavit of April 23rd which Your Honour will find at Tab 3 of Volume 1 of Mr. Rancourt's Motion Record and this goes from page 214 through to page 265.

30

And then, there's an affidavit of May 23rd, a month later, which you'll find at Tab 4 and it goes from page 267 through ---

THE COURT: Two sixty-seven (267)?

MR. DOODY: Yeah, 267 to 290 -- 293, I believe -- 292.

And both affidavits are very short and we'll look at them in a moment but they essentially attach exhibits.

So the -- the May 23rd affidavit attaches Exhibits A through J -- sorry, the April 23rd affidavit attaches Exhibits A through J and the May 23rd exhibit or affidavit attaches Exhibits A through I.

The background to this, Your Honour, is this: Mr. Rancourt issued his Notice of Motion -- served and files his Notice of Motion on January 16th and affirmed an affidavit on that date; and his Notice of Motion is at Tab 1 of Volume 1 of his Motion Record and his affidavit is at Tab 2 and it has attached to it Exhibits A through Z and that's what started this motion, that was the basis of the motion: his Notice of Motion and his affidavit.

In response, the university filed evidence from Allan Rock, the President of the university, and his affidavit -- and I won't take you to it -- but his affidavit can be found in Volume -- Volume 1 at Tab 11 and the university also filed and affidavit from Céline Delorme. Miss Delorme is a lawyer. She's with the Emond Harnden firm and she, together with Mr. Harnden, are

5 representing the university in a labour arbitration arising out of the dismissal of Mr. Rancourt by the university in what I believe was -- was sometime prior to 2009. I'm not sure of the exact date.

10 In addition, in terms of the university evidence, if it can be called that, Mr. Rancourt examined Robert Giroux who is the Chair of the Board of Governors of the university and Mr. Giroux was examined pursuant to Rule 39.3 as a witness on the motion.

Mr. Rancourt indicated that he wanted to examine Giroux as a witness ---

15 **THE COURT:** But you had three witnesses that were examined and were refused on ---

MR. DOODY: There were three. There was Céline Delorme ---

THE COURT: Right.

MR. DOODY: --- Allan Rock ---

20 **THE COURT:** Rock.

MR. DOODY: --- and Robert Giroux.

THE COURT: Okay.

MR. DOODY: But we only filed affidavits for two of them.

25 **THE COURT:** Céline Delorme was examined?

MR. DOODY: She was cross-examined as well.

THE COURT: In this proceeding?

MR. DOODY: In this proceeding, in this motion, that's right. And I'll explain why in a moment.

30 So Mr. Rancourt said that he wanted to examine Mr. Giroux under Rule 39.03 and Rule 39.02 -- if I could just ask Your Honour to turn

up my factum, Schedule B, the very last page -- I reproduced Rule 39.02. Rule 39.02 provides that:

"... a party who has cross-examined on an affidavit delivered by an adverse party shall not subsequently deliver an affidavit for use at the hearing or conduct an examination under the Rule 39.03 ..."

And 39.03 is where you just service summons to a witness on a motion and you examine them in the reporter's office.

"... so shall not subsequently deliver an affidavit or conduct a 39.03 exam without leave or consent and the Court should grant leave on such terms as they are just where it's satisfied that the party ought to be permitted to respond to any matter raised on the cross-examination with evidence in the form of an affidavit or a transcript of an examination conducted under Rule 39.03."

There was difficulty in arrange -- so for this reason -- and this rule, of course, is there to prevent battle of never-ending affidavits, affidavit never-endum.

And so, the basic rule is you put your evidence in before you cross-examine and you can't deliver a new affidavit or do a 39.03 exam after you've started cross-examination.

The difficulty was one of schedule and, at a case conference on April 2nd, there was an agreement reached as to when witnesses would be cross-examined and, because of scheduling, both Mr. Giroux and Mr. Rock were to be -- were to be

5 examined on April 18th. Mr. Rock cross-examined on his affidavit and Mr. Giroux examined under Rule 39.03.

Mr. Rancourt took the position: I shouldn't have to cross-examine Mr. Rock before I examined Mr. Giroux because that would deprive me of the opportunity to file an affidavit responding to Giroux because I would have already conducted a cross-examination of Rock.

10 And so, therefore, the parties consented to Mr. Rancourt examining Mr. Giroux under 39.03 after the cross-examination of Mr. Rock and consented to Mr. Rancourt being able to file an affidavit responding to Giroux' evidence after the -- the examination of him but only with respect to Giroux' evidence.

15 **M. RANCOURT:** Objection.

MR. DOODY: And that was the endorsement ---

M. RANCOURT: Excusez-moi.

20 **MR. DOODY:** --- which I'm going to take you to, Your Honour.

M. RANCOURT: Il y a une petite erreur factuelle, elle est peut-être importante. Je veux juste la signaler.

25 En fait ---

MR. DOODY: I'm sorry. I'm sorry.

30 **M. RANCOURT:** En fait, Monsieur Giroux a été examiné avant Monsieur Rock, le matin du 18, et ensuite Monsieur Rock l'après-midi même du 18 a été examiné.

Donc, je pense que mon ami a -- a échangé l'ordre ---

MR. DOODY: I'm sure -- I'm sure that's correct and it doesn't ---

M. RANCOURT: O.k.

MR. DOODY: --- it doesn't change the situation.

M. RANCOURT: Merci.

MR. DOODY: The point was Mr. Rancourt didn't want to be behind the 8 ball examining Mr. Giroux and then examining Mr. Rock on the same day before he would have had an opportunity that he would otherwise have had to file an affidavit responding to Giroux.

So, therefore ---

THE COURT: Okay, so he files the affidavit after he examines ---

MR. DOODY: After -- and after he crosses Mr. Rock.

THE COURT: Okay.

MR. DOODY: After he cross-examines Mr. Rock.

And so the -- but it was to be responsive to the evidence of Giroux, it was not -- it was not a green light to bypass the requirements of 39.02 with respect to Mr. Rock's evidence.

So that was the -- the result of that was the -- the endorsement in the case conference on April 2nd and that can be found in the university's Supplementary Responding Motion Record at Tab 2, page 8. This is the endorsement of Justice Beaudoin and you'll see on page 8 Justice Beaudoin sets out a time table -- and Mr. Rancourt is quite right, Mr. Giroux was to be examined first on the 18th at 10:00 a.m. Mr. Rock in the afternoon of the 18th; then Miss St.

5 Lewis -- Professor St. Lewis -- on April 23rd at 10:00 a.m.; Dean Feldthusen, April 23rd in the afternoon; Miss Delorme, on the 24th of April and Mr. Rancourt, on the 24th of April in the afternoon.

10 And then, paragraph 7, Justice Beaudoin ordered Mr. Rancourt will deliver any supplementary affidavit to the evidence given by Mr. Giroux at his examination by April 23, 2012, at 10:00 a.m.

15 So leave was given to Mr. Rancourt in advance by way of the case conference endorsement to deliver a supplementary affidavit to the evidence given by Mr. Giroux so long as it was served prior to 10:00 a.m. on April 23rd which, not coincidentally, was the time at which Professor St. Lewis' cross-examination was to begin.

20 So the clear purpose, intent and wording of the endorsement was that he could deliver an affidavit by the 23rd of April at 10:00 a.m. but only supplementary to the evidence given by Mr. Giroux.

25 And the affidavit -- the April 23rd affidavit was delivered the morning of April 23rd before Professor St. Lewis' cross-examination was commenced and it's our submission, Your Honour, that the affidavit of April 23rd is not admissible.

30 It's not for four reasons: One, it's not in accordance with the order of April 2nd. It is

not a supplementary affidavit to the evidence given by Mr. Giroux.

Secondly, the facts to which that affidavit speaks and to which the May 23rd speaks have already been ruled as irrelevant and the evidence inadmissible as a result by Justice Beaudoin's decision on the refusal's motion of June 20th as described in his reasons of August 2nd.

And as a result of the principles of *res judicata* and issue estoppel those -- the issue of the relevance of the matters referred to in both these affidavits has been decided by this Court. Mr. Rancourt sought leave to appeal from that decision. It was denied and he is barred from re-litigating the same issue.

Thirdly, even if it's -- even if Mr. Rancourt is not estopped from re-litigating the same issue of the relevance these matters, it is irrelevant for the same reason that Justice Beaudoin gave in his ruling of June 20th as explained in his reasons of August 2nd. It's irrelevant and, therefore, inadmissible.

And fourthly, it does not meet the test required by Rule 39.02 as that test has been explained in the evidence because this was an affidavit delivered after the cross-examination of Mr. Rock and, in order to be admissible, Mr. Rancourt needed leave and he doesn't need the test for leave.

If I could just ask you to turn up the April 23rd affidavit, Mr. Rancourt's Motion Record, Volume 1, Tab 3, starting at page 214.

And there are -- this is a very brief affidavit ---

THE COURT: Let me put it this way, though, if it's not relevant, does it -- will it affect the outcome of this motion that I have to -- I mean, I understand you have some arguments ---

MR. DOODY: Well, in my submission, it won't but you don't even have to go there.

But it's important for this reason, Your Honour ---

THE COURT: Okay.

MR. DOODY: I think I understand your question.

THE COURT: Yeah, I'm saying why should I get involved in this if it's not that ---

MR. DOODY: Okay.

THE COURT: Yes.

MR. DOODY: Well, I say it's not ---

THE COURT: To put it simply.

MR. DOODY: --- admissible because it's not relevant.

Mr. Rancourt wants to say this is the evidence that shows the improper motive. That's what he wants to put this evidence in, to show the improper motive.

THE COURT: Okay.

MR. DOODY: And what he wants to do is he wants to say ---

THE COURT: Improper motive by Mr. Rock.

MR. DOODY: Mr. Rock.

In making the decision to fund the litigation and what Mr. Rancourt wants this Court to conclude is that Mr. Rock is lying when he

5 said that the only motive was as described in the evidence that Mr. Deardon has taken you through and that, in fact, the motive was a nefarious one arising out of his intense personal dislike of Mr. Rancourt.

10 And that is precisely the issue that was before Justice Beaudoin and it was -- as a result of Justice Beaudoin ruling that that -- that a suggestion that that was the motive is irrelevant and inadmissible, that Justice Beaudoin ruled all those questions to which objections were taken to be irrelevant.

15 And the documents that Justice Beaudoin ---
THE COURT: Did Justice Beaudoin deal with this affidavit?

MR. DOODY: He didn't deal with the affidavit, he dealt with the same ---

THE COURT: The same issues?

MR. DOODY: --- factual issues.

20 **THE COURT:** The same issues.

MR. DOODY: That's what I'm about to take you through, Your Honour.

THE COURT: Okay.

25 **MR. DOODY:** So the affidavit is divided into three parts. It's quite short. It's only two and a half pages.

30 In paragraphs 4 through 6, Mr. Rancourt attaches -- this is on page 216 of the record -- Mr. Rancourt attaches three documents received from the Plaintiff Joanne St. Lewis.

In paragraphs 7 through 13, he attaches seven documents which were either identified or

unable to be identified on cross-examination of witnesses and -- and then paragraph, Part C, he describes further evidence that he hoped would come available later in May.

So if I could just take you, Your Honour, to Exhibit A, which is at page 220?

This is an -- this is an e-mail from Ms. St. Lewis to Mr. Rock dated February 14th, 2011. You were shown this this morning and it is an e-mail in which Professor St. Lewis says to Mr. Rock:

"... I make it a practice to delete the communications from Mr. Rancourt and I've done that in this case ..."

Your Honour, that has absolutely nothing to do with Mr. Giroux or his evidence. It is not supplementary to Mr. Giroux' affidavit.

Exhibit B, at page 222, another e-mail from Professor St. Lewis to Mr. Rock in which she says:

"... I've been receiving e-mails of support which give me a sense of the post ..."

The 'post' being the defamatory blog and has nothing to do with the evidence given by Mr. Giroux.

Exhibit C ---

M. RANCOURT: Monsieur le juge ---

MR. DOODY: --- at page 200 ---

M. RANCOURT: --- je voudrais tout simplement signaler que mon ami se donne la permission ---

MR. DOODY: I'm sorry, if my friend is going to say something, could he just give me a second to allow me to grab the headphones?

5 **M. RANCOURT:** Alors, je voudrais simplement signaler que mon ami se donne la permission de vous montrer un document et de lire une seule phrase sans donner le contexte de ce document, chose qu'on m'a pas permis de faire ce matin.

Il y a trois ou quatre phrases ici et il ne les a pas lues. Il a lu une seule et il a dit cette phrase n'est pas pertinente.

10 **LA COUR:** Mais la représentation qu'y a faite c'est que c'est pas relié à Monsieur Giroux ces affaires entre Madame St. Lewis et puis Monsieur Rock.

15 **M. RANCOURT:** Mais le contexte est qu'il y a une deuxième phrase ici qui est suprêmement pertinente à cette action ---

LA COUR: Reliée à Monsieur Giroux?

M. RANCOURT: Non.

LA COUR: À Monsieur Giroux?

20 **M. RANCOURT:** Mais relié à l'action.

LA COUR: C'est ça, c'est le point de Monsieur Doody c'est ---

M. RANCOURT: D'accord mais ---

25 **LA COUR:** --- c'est que c'est pas relié à Monsieur Giroux, c'est relié à Madame St. Lewis et ça ---

M. RANCOURT: Donc, vous lui permettez de faire la sélection pour faire son point, chose que je n'ai pas eu le droit de faire ce matin.

30 **LA COUR:** Non, mais si c'est dans -- c'est pris hors contexte et puis c'est pas vraiment que c'est l'entente d'intention des parties, c'est pas reflété.

Donc, ça, vous pouvez pas juste prendre -- ni vous ni Maître Doody -- juste prendre une partie d'une phrase et dire: Voilà. Il faut lire au contexte.

Mais le point de Monsieur Doody c'est que ces -- ces lettres-là peut-être sont reliées à Madame St. Lewis et à Monsieur Rock et non pas Monsieur Giroux. C'est ça si j'ai bien compris.

Si selon vous c'est pas le cas, c'est une méreprésentation?

M. RANCOURT: Je vais faire des contre-arguments plus tard ---

LA COUR: Bon, o.k.

M. RANCOURT: --- mais je vais expliquer le -- le lien, monsieur le juge.

LA COUR: O.k.

M. RANCOURT: Merci.

MR. DOODY: Your Honour, I may not be able to finish at a quarter to five if Mr. Rancourt continues to interrupt.

Exhibit C, at page 225, is an e-mail about setting up the appointment for the meeting among Dean Feldthusen and Professor St. Lewis and Mr. Rock on the 15th of April, 2011 has nothing to do with Mr. Giroux.

Exhibit D is the only document which relates to Mr. Giroux' examination and it -- it's at page 233 -- and this is an article called "Ottawa's Dismissal of Denis Rancourt", a commentary on my -- Mr. Rancourt's labour dispute with the university. He put it to Mr. Giroux during the examination and Mr. Giroux knew nothing about it;

5 had never seen it, couldn't identify it. That's why it was given a letter exhibit as you can see from the document, Exhibit D, for identification rather than a numbered exhibit to enter it into evidence.

And if you -- and that can be seen and I won't take you to it in the transcript of Mr. Giroux' examination, Tab 3, Volume 2, page 321, line 22 to page 322, line 20.

10 Exhibits E through J, in this April 23rd exhibit, were all documents which were put to Mr. Rock during his cross-examination and, therefore, had nothing to do with Mr. Giroux' cross-examination.

15 And, in fact, Exhibits H, I and J were documents which Mr. Rock could not identify and, again, they're simply marked with letters rather than numbers on that cross-examination.

20 So the affidavit of April 23rd is in no way supplemental to the evidence of Mr. Giroux and, therefore, the April 2nd endorsement does not give leave to Mr. Rancourt to enter this into evidence.

25 And Mr. Rancourt was told on May the 4th that there would be objection taken to the admissibility of this affidavit.

30 And if Your Honour could turn up Tab 10 of Volume 1 of Mr. Rancourt's Motion Record, you'll see that there is a discussion about this affidavit and that, at page 364 of the record, second page of the transcript, starting at about line 25, Justice Beaudoin asks Mr. Deardon and I

whether we'd received the supplementary affidavit and I respond:

"Yes, yes, Your Honour, we received that affidavit in the time set out in the endorsement. We -- at least from my part, I believe Mr. Deardon shares this -- take the position that none of the evidence in that affidavit is admissible and will be making submissions."

And Justice Beaudoin says:

"Lors de la decision? Lors de la décision? At the time of the hearing of the motion?"

I say:

"Yes."

Mr. Justice Beaudoin says:

"O.k. D'accord.

Donc, vous comprenez c'est lors de la motion où ils vont faire des représentations que l'affidavit supplémentaire n'est pas conforme et n'est pas une preuve qui est admissible. »

So Mr. Justice Beaudoin tells Mr. Rancourt on April the -- sorry, on May the 4th, that the admissibility of this is going to be determined at the outset of the hearing of the champerty motion.

And that is made clear in the endorsement from that case conference which is found at Tab 3 of the university's Supplementary Motion Record and that's at Tab 3, page 13 of the record, paragraph 3:

"The champerty motion will be heard at 10:00

a.m. August 29th. The Defendant's request to file additional affidavit material for use on the motion will be dealt with at that time."

5 **M. RANCOURT:** Non, il y a une erreur factuelle importante ici je dois corriger. Je fais donc une objection.

Ce paragraphe se réfère à mon troisième affidavit que je devais demander qu'il soit admis parce que le deuxième affidavit avait déjà été permis par le Juge Beaudoin.

Et donc ce ---

MR. DOODY: C'est pas correct, Monsieur.

15 **M. RANCOURT:** Oui, tout à fait.

Il y a aucun doute -- il y a aucun doute que ce paragraphe parle de mon troisième affidavit et nous allons lire ensemble le procès-verbal de la réunion avec le Juge Beaudoin et c'est très clair -- c'est très clair -- j'avais la permission du Juge Beaudoin. Vous avez vu le -- l'autre 'endorsement' pour admettre mon deuxième affidavit.

20 Le troisième affidavit, j'avais averti le Juge Beaudoin -- on va lire le 'transcript' ensemble, vous allez voir, c'est très clair ce troisième c'est moi qui devait l'argumenter ---

LA COUR: Là, on -- là vous -- là vous parlez il y a objection à votre affidavit du 28 ---

25 **M. RANCOURT:** Du 23 avril.

LA COUR: Le 23 avril et aussi le 23 mai.

30 **M. RANCOURT:** Oui, et ce -- et ceci parle du 23 mai parce que ---

LA COUR: L'affidavit du 23 mai?

M. RANCOURT: La dernière chose que Monsieur Doody vient de lire, c'est-à-dire le 'endorsement' du 19 juin, le paragraphe 3 parle de mon affidavit du 23 mai qui est un affidavit que je devais demander la permission pour qu'il soit admis et je devais la demander au début de la motion présente d'aujourd'hui.

Donc, ça c'est quelque chose que, moi, je devais argumenter.

LA COUR: Oui.

M. RANCOURT: Et donc, ça se réfère à une question complètement différente de la question actuelle que Monsieur Doody est en train de discuter qui est la question de l'affidavit du 23 avril.

LA COUR: Oui.

M. RANCOURT: Un affidavit que j'avais la permission d'inclure et que si il veut exclure, c'est lui qui doit argumenter pour l'exclure.

LA COUR: O.k., t'avais la permission de l'inclure? Oùsqu'est la permission de l'inclure?

M. RANCOURT: Et c'est dans le 'endorsement' de la page avant qui est très clair.

À la page 8 de ce Motion Record de Monsieur Doody, vous avez au paragraphe 6:

« Mr. Doody and Mr. Deardon ... »

Non, au paragraphe 7:

"Mr. Rancourt will deliver any supplementary affidavit to the evidence given by Mr. Giroux at his examination by April 23rd, 2012 ..."

LA COUR: Non, non, non, mais ---

M. RANCOURT: Voyez-vous?

LA COUR: Oui, oui. Non, t'avais la permission de -- de livrer un affidavit relié à Monsieur Giroux.

Le point de Monsieur Doody ---

M. RANCOURT: Le -- le 23 avril ---

LA COUR: --- c'est pas relié ---

M. RANCOURT: Le 23 avril.

LA COUR: Oui.

M. RANCOURT: Oui.

LA COUR: Mais le point de Monsieur Doody c'est que c'est pas relié ---

M. RANCOURT: Je comprends le point de Monsieur Doody.

LA COUR: Oui.

M. RANCOURT: Je comprends le point de Monsieur Doody.

LA COUR: Mais, selon vous, le seul affidavit que j'ai affaire c'est le 28 de mai?

MR. DOODY: It's what the transcript says.

M. RANCOURT: Non, le 23 mai.

LA COUR: Le 23 mai.

M. RANCOURT: Écoutez, c'est très ---

LA COUR: Ça c'est -- ça c'est une demande vous devrez faire.

M. RANCOURT: Oui, et je dois la faire aujourd'hui.

LA COUR: Oui.

M. RANCOURT: Oui.

Monsieur Doody est en train de discuter uniquement, en ce moment dans son argument,

l'affidavit du 23 avril et il mélange l'affidavit du 23 avril avec le 'endorsement' du 19 juin qui parle du fait que je vais demander la permission pour mon affidavit du 23 mai.

LA COUR: O.k.

M. RANCOURT: Et je pense que Monsieur Doody a eu la chance de regarder et de discuter avec Monsieur Deardon et il va pouvoir confirmer ce que je dis; n'est-ce pas?

THE COURT: So I'll turn it back ---

M. RANCOURT: Monsieur Doody?

THE COURT: --- to Mr. Doody.

O.k., non, j'ai compris votre objection.

M. RANCOURT: Ah, mais c'est -- j'ai le procès-verbal avec le Juge Beaudoin. C'est très clair.

LA COUR: O.k. Bon, j'ai l'objection.

Mr. Doody?

MR. DOODY: Your Honour ---

THE COURT: There's an objection here.

MR. DOODY: Your Honour, I will not finish by 4:45. Mr. Rancourt has gone on to speak for 15 minutes at least of the last half hour.

The transcript which I took you to, Your Honour ---

THE COURT: Yes?

M. RANCOURT: --- which I shall take you to again which is at Tab 10 ---

THE COURT: I think -- I think it may -- I'm not sure a lot turns on it.

He's saying that the 23rd of April he had permission from Justice Beaudoin but your point

on that is that it's all -- not related to Mr. Giroux, it's related to Mr. Rock.

MR. DOODY: Exactly.

And ---

THE COURT: So whether he had permission or not is irrelevant.

MR. DOODY: And my point -- my point is simply, Your Honour, on the first court date after we were served with the April 23rd affidavit, on the very first -- second page of the transcript of that appearance -- so we would have -- we just stood up and this is apparent from the transcript which is at Tab 10 of Mr. Rancourt's Motion Record, Volume 1, the first page is the Court speaking and ---

THE COURT: There's going to be objection that you -- he's advised that there'll be an objection taken to the admissibility of that affidavit ---

MR. DOODY: Of the April 23rd affidavit.

THE COURT: Because of his lack of relevance and it's related to Mr. Rock not to Mr. Giroux.

MR. DOODY: Exactly.

And that is clearly about the April 23rd affidavit because Mr. Justice Beaudoin says in the -- on the first page of the transcript, about four lines from the bottom of -- about line 26, Mr. Rancourt had a Supplementary Affidavit that he had to file the 23rd of April and he then asked us did we get it. I said:

"Yes, but we're going to say it's inadmissible."

THE COURT: It's not relevant.

MR. DOODY: And Justice Beaudion said:

"Fine, you'll argue that at the outset of the motion."

M. RANCOURT: Mais Monsieur ---

MR. DOODY: That's what he said:

"... hors de l'audition."

LA COUR: Non, non, non.

M. RANCOURT: Mais il y a -- il y a un problème.

Monsieur Doody a dit ---

THE COURT: No, we've got to complete it. We got to complete it.

Je vais vous entendre en réplique. Faire une note ---

M. RANCOURT: C'est incroyable.

LA COUR: Faire une note.

M. RANCOURT: Il y a une médirection de la Cour.

Le paragraphe 3 auquel Monsieur Doody a fait allusion est à propos d'un autre affidavit qui est venu après et il refuse de corriger son erreur.

Je trouve ça vraiment triste et, en plus ---

LA COUR: Non, non.

M. RANCOURT: --- en plus, ---

LA COUR: Non, non, j'ai compris votre objection. Il faut qu'on complète. Comme j'ai -- we'll have to ---

MR. DOODY: And, Your Honour, nothing may turn on it, my point is simply this: In the endorsement from that case conference, Justice Beaudoin said with the May 4th case conference:

"... the champerty motion will be heard on August 29th. The Defendant's request to

file additional affidavit material for use on the motion will be dealt with at that time."

That certainly deals with the May 23rd affidavit. I agree with it.

M. RANCOURT: Absolument pas.

MR. DOODY: But Mr. ---

LA COUR: Monsieur ---

M. RANCOURT: Absolument pas. Mais c'est incroyable.

LA COUR: Non, non, non, non.

MR. DOODY: I said « May 23rd ». Isn't that what he said?

M. RANCOURT: Ah, 'May'? Maintenant il se corrige. O.k.

LA COUR: Et c'est -- il était d'accord avec vous.

M. RANCOURT: O.k., excusez-moi, j'ai entendu 'avril'.

LA COUR: Il peut pas avoir une objection quand que Monsieur est d'accord.

M. RANCOURT: Non, non. Non, non. Non, mais ---

MR. DOODY: Your Honour, if I could be permitted to finish one sentence before ---

M. RANCOURT: Monsieur Doody s'est corrigé ---

LA COUR: Monsieur Rancourt ---

M. RANCOURT: --- et j'accepte la correction.

LA COUR: Monsieur Rancourt ---

M. RANCOURT: Je m'excuse, j'ai mal entendu, je m'excuse.

LA COUR: O.k.

MR. DOODY: Peut-être ---

M. RANCOURT: Je m'excuse.

MR. DOODY: It's late.

M. RANCOURT: Je m'excuse.

MR. DOODY: That clearly deals with the May 23rd affidavit. It also, in my submission, deals with the April 23rd affidavit when one reads that in conjunction with the transcript of what happened that day which I've just read to you.

But, I agree, nothing turns on it because the only way he can get the April 23rd affidavit in pursuant to the endorsement from the April 2nd case conference is if it's supplementary to the evidence of Mr. Giroux and it isn't.

So the decision of Justice Beaudoin of June 20th determined what was relevant to this motion, the champerty motion.

And the decision is found at Tab 7 of the university's Supplementary Motion Record and, at this motion, the Defendant took the position that any evidence which raised the possibility of an improper motive of any sort on the part of Mr. Rock when he was deciding to fund the litigation was relevant.

Justice Beaudoin ruled that only evidence of the particular improper motive pleaded by Mr. Rancourt in his Notice of Motion and supporting affidavit of January 16th was relevant.

Justice Beaudoin ruled that because, otherwise, Mr. Rancourt would have been permitted to use the vernacular "to lie in the weeds" and ambush the university witnesses with allegations of an improper motive of which they had no notice

and on which they had not had an opportunity to file evidence.

And that is clearly set out by Justice Beaudoin, starting at paragraph 29 of his Reasons for Decision of August 2nd and that's at Tab 7 of the university's Motion Record starting at page 201 of the -- of the record.

If I could just take you through that, Your Honour, it's not long but it's important.

Paragraph 27:

"The Defendant ..."

That's Mr. Rancourt:

"... and counsel for the University and Professor St. Lewis presented overview arguments on the topics of (1) champerty and maintenance and (2) the scope of the questions permitted on the cross-examination of the various affiants and of the witness who was summoned, Mr. Robert Giroux.

(1) Issues Relevant to a Consideration of Whether an Action May be Dismissed on the Basis of Champerty and Maintenance

[28] The parties agree on the law as set out below:

Champerty and maintenance are torts. Neither of them, without more, provides a defence to an action."

citing the *Webb* case. And:

"Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes of others in which

the maintainer has no interest whatsoever and where the assistance he or she renders is without justification or excuse.

Champerty is an egregious form of maintenance in which there is the added element that the maintainer shares in the profits of the litigation. Without maintenance there can be no Champerty."

citing the *McIntyre Estate* case of the Court of Appeal. Then:

"If there is an allegation of maintenance, the Court must carefully examine the conduct of the parties and the propriety of the motive of the alleged maintainer. There can be no maintenance if the alleged maintainer had a justifying motive."

Justice Beaudoin went on to say:

"The motives for funding the litigation are critical. The Defendant says he is entitled to cross-examine all affiants and witnesses broadly on any possible improper motive that the University may have to fund this litigation."

The next page:

"In the Compendium of Argument that he filed at the hearing of this motion, Dr. Rancourt alleges for the first time on page 1:

'In order to establish that the University has engaged in maintenance and champerty to the extent that it constitutes an abuse of process, the Defendant wishes to demonstrate that the **real motive for the University**

funding the litigation of the Plaintiff is to persecute, harm, and/or suppress the Defendant and, as such, that the action is vexatious and an abuse of process.’”

Bolding is Justice Beaudoin’s.

“This motive is not stated anywhere in his Notice of Motion, nor does it appear in his Affidavit. The Defendant argues that this is somehow implicit in his Motion when he says in his material that he needs to ascertain “the motives for entering the funding agreement.” He also maintains that the Respondents would be aware of the importance of the issue of motive and that they should not be surprised by his questions. He also emphasizes that he is a self-represented litigant.

[32] I agree with the counsel for the University that it is clear from a review of the breadth of the documentary requests, and the nature of the questions asked and to which objection was taken, that the Defendant seeks to have this Court examine and make factual determinations about issues which were not raised in his Notice of Motion, nor were they raised in the Affidavit he swore in support of that Motion. If he wished to make broad allegations that the University was funding this litigation as part of a plan to persecute, harm or suppress him, he ought to have said as much. Instead, he waited

5 until the University had delivered its
evidence, responding to the specific
allegations of improper motive made in the
Notice of Motion and Affidavit, and only
then asked questions which he hoped would
produce evidence to show a motive other
than the entirely proper motive described
by Mr. Rock in his Affidavit. A Notice of
10 Motion is not meant to invite a guessing
game. The Defendant's attempts to seek out
information on any issue which he theorizes
might be relevant to the issue of motive
are nothing more than a fishing expedition
because he does not like the answers he was
15 given."

And he earlier held -- Justice Beaudoin earlier
held, if I can take you back to page 198, that
the allegations that Mr. Rancourt made in his
Notice of Motion and affidavit, in paragraph 12
20 were three. These are the allegations he made
to basis an accusation of champerty and
maintenance:

(1) the university is entirely funding the
litigation; (2) the university will receive a
25 share in the proceeds; (3) the university is
using the fact of the defamation suit to bar the
Defendant from a return to his post in the
labour arbitration -- we're using that -- even
if his dismissal is found to be unjustified.

30 And, as Justice Beaudoin -- Justice
Beaudoin explains, the evidence that was filed
by the university answers all of those points.

5 My friend, Mr. Deardon, points out -- and I won't take you there but at paragraph 10 of his factum, he cites the decision of Justice Donald Brown in the so-called *Protonix Research Ontario* case which can be found in Professor St. Lewis' authorities at Tab 1 in which the Court holds:

10 "It is not for the Court to read into pleadings or affidavits of a self-represented party matters that should have been included in those documents. To do so would be very unfair to the other party ..."

15 And that is essentially the same rationale that Justice Beaudoin held on the -- in the interlocutory motion about refusals.

20 And Justice Beaudoin dealt with the same issues in his motion refusals that are raised again by Mr. Rancourt in both the April 23rd and May 23rd affidavit.

25 Just to take an example, if you take my university Supplementary Motion Record and turn up Tab 10, Your Honour, Tabs 8, 9 and 10 of this Supplementary Record are copies of a chart -- charts that were put into the university's factum on the refusals motion and they are useful on this motion to see what was decided by Justice Beaudoin.

30 And at page 287 ---

THE COURT: It's page 287?

MR. DOODY: No, I think I've got the wrong number written down. Just bear with me, Your Honour.

At page 283, issue 15 as described by Mr. Rancourt, the specific question at issue -- and this is the fourth column over, under the heading "Specific Question":

"Does the university have any policy or directives about its use of surveillance of professors or students?"

Justice Beaudoin held that that question was not relevant. Mr. Rancourt's point was that he wanted to establish that the university had been conducting covert surveillance of him, that this was improper and that this was evidence of an improper motive.

And Justice Beaudoin held -- and this is at page 200 and Tab 7 -- page 205 of the record. Tab 7 is Justice Beaudoin's Reasons of August 2nd. He held:

"With respect to issue number 15, the university policy about surveillance was not relevant to the matters raised in the Notice of Motion."

And Justice Beaudoin noted in those reasons that Dr. Rancourt was aware of surveillance of himself in 2008 before Mr. Rock became President and, moreover, that was being litigated in the labour arbitration.

Exhibit I, Your Honour, to the April 23rd affidavit was described by Mr. Rancourt when he put it -- when he put that document to Mr. Rock on his cross-examination and that -- I won't take you to it but the transcript is in Mr. Rancourt's Motion Record, Volume 3, Tab 16,

pages 123, 125 and 126.

Mr. Rancourt described that document as "Evidence of Covert Surveillance Program". That is the same topic that Justice Beaudoin ruled was irrelevant and inadmissible on this champerty motion when he ruled on the Refusals Motion.

Similarly, Mr. Rancourt sought to have Mr. Rock answer questions of whether the university had ever paid for recordings or transcripts of speeches and statements made by Mr. Rancourt. The submission was that this was an improper surveillance and that question was, as is shown by the decision of Justice Beaudoin, not pursued by Mr. Rancourt because of rulings that Mr. Justice Beaudoin had made earlier that day.

But at paragraph 57 of his factum, in this motion, Mr. Rancourt says that the documents at Exhibits C, D, E, F, G, H and I of the May 23rd affidavit are all evidence of a covert information gathering campaign by the university against Mr. Rancourt.

That's the very subject that Justice Beaudoin ruled was irrelevant and inadmissible.

Similarly ---

THE COURT: That's on the May 23rd affidavits.

MR. DOODY: Those cites I gave you were the May 23rd ---

THE COURT: E, F, G, H, I.

So there's only A, B -- A and B; is that right?

MR. DOODY: Well, I'm just giving you some

examples, Your Honour.

THE COURT: Okay. Okay.

MR. DOODY: Similarly, Mr. Rancourt wanted to pursue with Mr. Rock and Mr. Giroux, the question of whether it was appropriate for the university to have conducted what he alleged was a non-consensual psychological examination of him by a third-party psychiatrist.

He questioned Mr. Rock about that and, at paragraph 28 of my factum, I point out that that question which -- to which he sought an answer in the Refusals Motion was abandoned before Justice Beaudoin as a result of earlier rulings.

But he then uses the letter -- at paragraph 53 of his factum, he uses the letter which is attached as an exhibit to his affidavit to show that the university obtained a psychiatric evaluation of him without his knowledge or consent and that is the precise -- in paragraph 53 of his factum, he cites the document at page 264 of Volume 1 which is Exhibit J to the April 23rd affidavit.

So the very subject that Justice Beaudoin had ruled irrelevant, he is attempting to get in through the back door by filing these affidavits.

And, Your Honour, Mr. Rancourt is bound by the interlocutory rulings of Justice Beaudoin and this is clear law. I'll just take you briefly to two or three cases ---

THE COURT: I don't think I have to ---

MR. DOODY: Okay.

THE COURT: If their leave to appeal was sought and it was denied ---

MR. DOODY: Exactly.

THE COURT: --- well, it's ---

MR. DOODY: So that's ---

THE COURT: So it's over.

MR. DOODY: It's over and those interlocutory rulings are binding ---

THE COURT: Surely for me.

MR. DOODY: --- and the case -- the case ---

THE COURT: If some higher authority interferes, this will be it but ---

MR. DOODY: Well, it's my submission that they're binding even at the higher authority and that's what the -- the cases at Tab 1, 2 and 3 of my Brief of Authorities say.

The Supreme of Court of Canada and the Court of Appeal of Ontario.

So, therefore, Your Honour, in my submission, the facts to which both affidavits speak are irrelevant and, even if I'm wrong on this issue estoppel point -- and I say I'm not -- in any event, Justice Beaudoin is correct and I point -- I set out the case law upon which Justice Beaudoin relies for the proposition that relevance on a cross-examination on a motion is determined by the Notice of Motion and the affidavit ---

THE COURT: So the parameters set out in the ---

MR. DOODY: The parameters as set out in that and that is -- is in my factum as well, Your Honour.

5 And finally, these affidavits are inadmissible because they don't comply with the provisions of Rule 39.02 and the case on this, Your Honour, is the *First Capital* case at Tab 7 of my authorities and if I could just ask you to turn it up -- and I won't be long -- but it's a decision of the Divisional Court written by Justice Wilson and, in this decision -- and it's a 2009 decision -- the Court sets out the test -- the criteria to consider in determining whether a party should be granted leave to file an affidavit under Rule 39.02(2).

And at paragraph 13, the Court says:

15 "The case law under Rule 39.02(2) confirms the criteria to consider in determining whether a party should be granted leave to respond to a matter where he's done cross-examination. First, is the evidence relevant? (2) Does the evidence respond to a matter raised on the cross-examination? (3) Would granting leave to file the evidence result in non-compensable prejudice that could not be addressed by imposing cost terms or an adjournment. (4) Did the moving party provide a reasonable or adequate explanation for why the evidence was not included at the outset?"

30 And, Your Honour, I deal with this in my factum at -- oh, sorry, it's called "*First Capital Realty Inc. vs. Centrecorp Management Services*

Ltd." and I deal with this at page 22 of my factum, Your Honour, page 23.

The evidence is not relevant and I'm through that. The evidence does not respond to a matter raised on cross-examination. The most that you can say, Your Honour, is that some of the documents that Mr. Rancourt is trying to put in were -- were put to witnesses and they said they didn't recognize them.

And, in my submission, a party can't bootstrap the admissibility of a document that he -- that he wanted to ambush the witness with by simply putting it to the witness and, when the witness doesn't recognize it, putting it in later.

Many of these documents, in fact, were clearly in Mr. Rancourt's possession before the cross-examination.

Thirdly, the university and the Plaintiff would be prejudiced by the admission of the evidence today. This motion has been fought for the past 11 months with a number of interlocutory motions brought by the Defendant all on the case as pleaded. To now change the allegations would change the nature of the motion itself and Mr. Rancourt does not provide a reasonable or adequate explanation for why the evidence was not included at the outset, certainly with respect to the April 23rd affidavit, I think all but one of those exhibits were in his possession before he cross-examined Mr. Rock. He chose to not put them in his

original affidavit in an apparent attempt to ambush Mr. Rock.

5 So that's dealing with the admissibility of the documents and if I could deal very briefly with the substance of the motion, Your Honour?

10 At paragraph 57 -- and I won't read it -- I've set out the -- a summary of the decision of the Court of Appeal in the *McIntyre Estate* which Justice Beaudoin followed in his Refusals Motion and there is no maintenance, clearly, if there is a proper motive.

15 And, Your Honour, the evidence of the university was, with respect to the motive, very clear.

20 If I could just take you to paragraph 37 -- I may well finish within my time -- paragraph 37 of my factum, I set out Mr. Rock's affidavit and it's my submission that when -- when Mr. Rancourt read this affidavit, he realized that this motion is dead in the water and that's when he started the series of delaying motions which have occupied us and this Court for the last 11 months or nine months.

25 Mr. Rock swore this:

30 "In the late spring of 2011, I met with Professor Joanne St. Lewis and Bruce Feldthusen, Dean of the Faculty of Law, Common Law Section, at their request. Professor St. Lewis told me of the reference to her on Mr. Rancourt's blog. From her demeanour and her words, it was clear to me that Mr. Rancourt's words were

causing Professor St. Lewis enormous anguish and emotional upset and were also causing difficulty in her professional and personal life.

Professor St. Lewis also told me that, after much consideration, she concluded that she had no alternative but to commence a defamation action against the Defendant to restore her personal and professional reputation as a lawyer and professor at the university. She asked that the university pay the fees that she would incur. Dean Feldthusen was fully supportive of this request.

I made the decision that the university would reimburse Professor St. Lewis for the legal fees incurred in her defamation action against the Defendant. I'm advised by David Scott, counsel for the university, and believe that on October 25th, 2011, he wrote to the Defendant stating the reasons the university agreed to this."

He then quotes Mr. Scott's letter which has been read out before and he says:

"I made the decision for the reasons set out in Mr. Scott's letter.

Professor St. Lewis is the Plaintiff in this action. It is her action. It is she who provides instructions to her counsel. The university has not and does not provide instructions to Professor St. Lewis' legal counsel.

On October 19th, 2011, I made both the Senior Management Committee of the university and the Executive Committee of the university's Board of Directors aware of my decision that the university would reimburse Professor St. Lewis for her legal fees."

The next paragraph:

"Professor St. Lewis has asserted in her Statement of Claim that, in the event that punitive damages are awarded against the Defendant, she will donate half of the award of punitive damages to the Danny Grover 'Routes to Freedom' Graduate Law Students Scholarship Fund. I have never discussed this aspect of the matter with her. My decision to have the university reimburse her for her legal fees has nothing to do with her intention to donate a portion of any eventual award to a scholarship fund.

At the time that I agreed that the university would reimburse Professor St. Lewis for her legal fees, I had no idea that she intended to donate any portion of any damages she may be awarded to the scholarship fund. I first became aware of that fact after the Statement of Claim had been issued."

And on that last point, Mr. Rock was cross-examined and, at paragraph 39, he set out what he said on cross-examination about the funding.

He said again:

"I don't know how it's helpful to the Court but I can tell you that whatever the Plaintiff decides eventually to do with any proceeds she might eventually recover as a result of the judgement of the Court in the proceeding is entirely up to her and if she were to proffer money to the university, we would have to deal with that when it arose.

Q. But in your judgment would you accept that money?

A. It is not a question of my judgment.

I'm trying to answer your questions factually and I'm saying whatever she may eventually decide to do, I guess, is hypothetical and if she were ever to propose contributing any part of the proceeds of this lawsuit, eventually, that is something that would be determined on the merits at that time and it has got nothing to do with champerty and certainly nothing to do with our motive -- and certainly nothing to do with our motive and agreement to reimburse her for her legal expenses in this proceeding."

and that was Mr. Rock.

Ms. Delorme also gave an affidavit and Your Honour will recall that one of the improper motives that Mr. Rancourt alleged was that the university was using the fact of the lawsuit as -- as an argument against Mr. Rancourt in his labour arbitration. That's what he alleged.

And Ms. Delorme swore that that simply wasn't so and her affidavit is set out in paragraph 41. She said:

"The university is not using Professor St. Lewis' defamation action in the arbitration nor is it asking the arbitrator to determine issues relating to the defamation action. The university is only asking the arbitrator to consider the content of the Defendant's blog, the statements he made about Professor St. Lewis, not the fact that he's involved in the defamation lawsuit."

She then attaches the written submissions of the university in the arbitration in which they say:

"... the contents of the blog are presently the subject of a defamation proceeding commenced by Professor St. Lewis against Dr. Rancourt. The arbitrator will not be asked to determine issues relating to that proceeding. The content of the blog will be pointed to by the university in its submission that Dr. Rancourt's reinstatement should not be considered."

The content of the blog.

And she goes on to say that that very point was reiterated by Mr. Harnden in his opening statement at the labour arbitration and she attaches her almost verbatim notes of that which say the same thing.

And at page 19, at the middle of the page, her notes say that, in reply, Mr. Harnden said:

"... rely on the content of the statement made by R ..."

meaning Mr. Rancourt:

"... regarding his fellow professor not the fact that he's involved in a lawsuit."

So there's no question that the evidence was all consistent.

Now, Mr. Rancourt submits today that there is an issue about Mr. Rock's credibility and I say to you, Your Honour, there is no issue on the evidence. The only issue about Mr. Rock's credibility in Mr. Rancourt's mind arises because he doesn't want the Court to accept Mr. Rock's evidence as truthful.

He wants the Court to conclude either that Mr. Rock is lying when he says that the only motive was the well-founded desire to assist a university professor who was the subject of an outrageously racist attack as a result of something she was doing that the university asked her to do. Mr. Rancourt wants that to be not accepted and, therefore, he says there is a credibility issue.

There is no credibility issue. Mr. Rancourt took you to Exhibits 1 and 2 on Mr. Rock's cross-examination and I ask you, Your Honour -- I won't take you to it because of the time -- but I ask you, after you retire, to read what Mr. Rock said about the those precise documents and that is Question 540 of Mr. Rock's cross-examination which is found at page 113 and page -- at page 116, Question 548. And that's

Volume 3 of Mr. Rancourt's Motion Record, Tab 16.

5 This is uncontradicted evidence and, essentially, Mr. Rock said: I don't care what those documents say, the view I had of you, Mr. Rancourt, did not colour the decision I made. There is no dispute, there's no conflicting evidence.

10 I won't repeat what Mr. Deardon said going through the cases but there is -- in my respectful submission, can be no doubt that, first of all, the motive was entirely proper, there is no agreement to share in the profit -- there can't have been an agreement because the
15 uncontradicted evidence is that the decision to fund was made without any knowledge that there was going to be a statement by -- in the Statement of Claim that part of the punitive damages would be donated to the scholarship.

20 And, in any event, the scholarship does not -- is not something that goes to the university, it benefits the student.

25 And there can be no doubt that there is no trafficking in litigation and, Your Honour, without taking you to it, if I could just direct you to paragraph 54 of the decision in *Operation One Inc. v. Phillips* which -- which my friend, Mr. Deardon, took you to and is found in my materials at Tab 16 in my Brief of Authorities
30 -- *Operation One Inc. v. Phillips*, if I could just ask you, in your chambers, to read paragraph 54, and also the decision the Justice

5 Perell of just last year in the case called *Adi*
-- A-D-I- v. *Datta* -- D-A-T-T-A, 2011 decision
of Justice Perell, P-E-R-E-L-L and paragraphs 53
to 54 of that decision which give, as is usual
with Justice Perell, an encyclopedic summary of
the law.

THE COURT: Summary and this is the law. Thank
you.

Monsieur Rancourt.

10 **M. RANCOURT:** Oui.

Est-ce que j'ai -- je vais avoir 15
minutes?

LA COUR: Oui.

15 **M. RANCOURT:** O.k., parce que ça va nous amener
à cinq -- passé 5h00.

LA COUR: C'est bien.

M. RANCOURT: Mais, au moins, on n'ira pas
jusqu'à 7h00.

LA COUR: C'est ça. Exactement.

20 **M. RANCOURT:** O.k.

Et j'aimerais demander que ces 15 minutes, si
c'est possible, ne soient pas interrompues.

LA COUR: Monsieur le greffier -- Mr. Registrar,
I know you have to leave at 5:00 o'clock?

25 **THE REGISTRAR:** Yes. I can wait an additional
five minutes.

THE COURT: Pardon?

THE REGISTRAR: Five or ten minutes.

I can wait an extra five or ten minutes.

30 **THE COURT:** So if you want to leave, I think we
can probably carry on in your absence, with all
due respect.

Well, as long as someone brings all the ---

THE REGISTRAR: Well, if Monsieur Rancourt doesn't go after 5/10 minutes, I'm fine with that.

THE COURT: Okay. There we have it, we have the limits.

M. RANCOURT: O.k.

Est-ce que ça serait possible que je puisse -- parce que j'ai -- évidemment, j'ai beaucoup de choses à dire en réponse, si je ne pouvais ne pas être interrompu?

J'ai choisi la priorité des choses que je veux dire et je vais juste vous les dire. Est-ce que c'est ---

LA COUR: O.k.

We should try doing that, I mean, unless there's something ---

MR. DOODY: But, Your Honour, it's not my practice to ---

THE COURT: No.

MR. DOODY: --- interrupt but if -- if Mr. Rancourt ---

M. RANCOURT: Non, mais ce que -- ce que je veux dire ---

LA COUR: Attends. Attends. Attends.

M. RANCOURT: Oui.

MR. DOODY: If Mr. Rancourt does not -- is not making a reply and depriving us of an opportunity to deal with it, then, that ---

THE COURT: Well, it's a conditional agreement.

M. RANCOURT: D'accord.

Et aussi, j'aimerais -- je préférerais ne pas

être dirigé par la Cour pendant les prochains 15 minutes ---

THE COURT: Well, again, we'll -- we'll follow the proper procedures. I think that's all we can say.

M. RANCOURT: D'accord.

Alors, voici. Premièrement, je voudrais dire que je pense que, aujourd'hui, il y a eu des injustices procédurales très importantes surtout, par exemple, par rapport au fait que je ne sais même pas encore si mes affidavits sont acceptés ou pas.

Le troisième affidavit, l'affidavit du 23 mai, c'était sensé être moi qui allais amener une motion pour le faire accepter. Je n'ai pas eu la chance de présenter cette motion, c'est Monsieur Doody qui a présenté une motion et, moi, je suis maintenant en réponse.

Donc, ça je trouve ça des erreurs procédurales très importantes et, en plus, les contraintes de temps, pour moi -- je l'ai dit au début et je le répète -- je continue par respect à la Cour mais je continue en objection.

J'estime que ce processus a été injuste à cause des contraintes pas raisonnables. Il y a plein de choses que je sais que je n'aurai pas la chance de dire, que je n'aurai pas la chance de répondre. Il y a des choses qui me sont venues après l'écriture de mon factum que je n'aurai pas la chance de dire.

Donc, pour moi, c'est une injustice fondamentale qui vient de se produire

aujourd'hui et je tiens à vous dire que, si je dois aller en appel, je vais sûrement soulever ces questions-là.

LA COUR: Je vais répondre à ça parce que vous le faisiez pour le record. Moi, je vais répondre pour le record qu'on a déjà parlé de cette -- votre position puis je ne l'accepte pas et vous avez vos plein droits d'appel.

Les temps limites, selon moi, en cette matière étaient fixés pour une journée par le Juge Beaudoin et encore par moi puis j'ai divisé le temps dans une manière, selon moi, équitable entre vous et les parties adverses et puis, ce, de mes meilleures capacités et puis ça sera à quelqu'un d'autre à juger si c'est acceptable ou non.

C'est les procédures qui sont suivies par la Cour d'Appel pour que, selon la Règle 1.04, que la justice doit être la manière la plus efficace et, en même temps, juste.

Donc, c'est cette balance-là qu'on poursuit pour compléter les matières dans les -- la matière plus efficace et juste et c'est pour ces raisons-là que j'ai -- je ne suis pas d'accord avec votre commentaire.

M. RANCOURT: Merci, monsieur le juge.

LA COUR: Vas-y.

M. RANCOURT: Je comprends ce que vous dites.

Et donc, je passe à mon deuxième point qui est: Je veux venir au 'Supplementary Responding Motion Record' de l'université et je veux aller à l'onglet -- premièrement, je veux aller à

l'onglet 2 et je veux lire ici l'item 6 qui était dans le jugement du Juge Beaudoin.

Et le jugement dit:

« Mr. Doody and Mr. Deardon will cross-examine Mr. Rancourt on his affidavit on April 24th at 2:00 p.m. »

LA COUR: Vous êtes à l'onglet?

M. RANCOURT: Je suis à l'onglet 2 du 'Motion Record' supplémentaire de l'université.

LA COUR: Oui.

M. RANCOURT: Et je suis à la page 8 de ce 'Motion Record'; vous voyez?

LA COUR: Oui.

M. RANCOURT: Et l'item 6 dit:

« Mr. Doody and Mr. Deardon will cross-examine -- will -- will cross-examine Mr. Rancourt on his affidavit on April 24th. »

Ils ne m'ont jamais examiné. Ils m'ont -- ils m'ont dit qu'ils me -- qu'ils n'allaient pas m'examiner à la dernière minute, le jour même, après que j'ai eu fini toutes mes examinations de leurs témoins.

Malgré le fait qu'ils ont laissé croire au juge et à moi-même qu'ils allaient m'examiner -- pendant des semaines et des semaines, ils nous ont laissé croire ça -- c'était dans le jugement et ça dit:

« ... will cross-examine ... »

Et donc, le but -- Monsieur Deardon m'a informé à la dernière minute sur le procès-verbal qu'il n'allait pas me contre-examiner le jour même après que j'ai eu fini toutes mes examinations.

J'estime qu'il y a un problème de justice et que ça va contre la règle du juge.

Deuxièmement, au point 7:

« Monsieur Rancourt will deliver any supplementary affidavit to the evidence given by Mr. Giroux. »

Pour moi, ça voulait dire que j'avais la permission d'amener des évidences supplémentaires aux évidences que j'avais obtenues de Monsieur Giroux. Ça voulait pas dire en réponse, ça voulait dire supplémentaires.

C'est comme ça que j'ai compris ça, c'est comme ça que on l'a discuté et c'est exactement ce que j'ai fait. J'avais la permission de soumettre cet affidavit.

Ensuite, si on passe à l'onglet 4 du même 'Motion Record' de l'université ---

LA COUR: Onglet 4?

M. RANCOURT: L'onglet 4 qui est très épais. C'est le 'transcript' et je vous amène à la page 98 du 'Motion Record'.

Et -- j'attends que vous arriviez à la page 98.

LA COUR: O.k. Oui.

M. RANCOURT: Et, ici, je veux vous montrer, monsieur le juge, que la question *res judicata* est absurde. Le Juge Beaudoin l'a dit lui-même.

Il y a une différence, monsieur le juge, entre les critères pour des refus, les critères pour des refus à savoir si on peut demander plus de questions sont différents que les critères de

ce qui -- de ce qui peut être permis comme évidence dans une motion principale. C'est deux choses différentes.

Et Monsieur Beaudoin était très conscient de ça alors je lis ses mots à lui, voici ce qu'il a dit -- je lis à partir de la ligne 13, alors, je dis:

« C'est clair, monsieur le juge, j'ai -- j'ai déjà demandé la permission devant la Cour d'inclure ces nouvelles informations et ça va être traité dans la motion principale à savoir si mon affidavit supplémentaire, deuxième affidavit supplémentaire, peut être inclus ... »

MR. DOODY: Your Honour? Your Honour, I can't follow the translation, he's talking too fast.

THE COURT: Just a little too -- ralentis ---

M. RANCOURT: Mais là, j'ai juste quelques minutes.

LA COUR: Oui. Oui.

MR. DOODY: But I need to be able to understand.

M. RANCOURT: D'accord. D'accord, mais je suis en train de le lire, Monsieur Doody, vous n'avez qu'à le lire avec moi.

Alors, ---

MR. DOODY: It's in French.

LA COUR: O.k.

M. RANCOURT: Très bien, mais vous lisez très bien le français, Monsieur Doody, vous avez fait la preuve de ça.

« J'en ai parlé aussitôt que j'ai pu, tout ça ... »

et le -- et monsieur le juge Beaudoin répond:

« Mais dans le -- mais là, c'est -- c'est
purement une question de refus de
questions. »

O.k.? Il fait la distinction entre que j'ai
demandé et que je veux inclure cette
information-là et il dit ---

LA COUR: Mais vous êtes à quel -- quel ---

M. RANCOURT: Excusez-moi, j'ai ---

LA COUR: Page?

M. RANCOURT: Quatre-vingt-dix-huit (98).

LA COUR: Oui?

M. RANCOURT: La page 98 du 'Motion Record'.

LA COUR: Oui. Oui.

M. RANCOURT: Et je suis à la ligne 13. J'ai
commencé à lire à la ligne 13.

LA COUR: Oui.

M. RANCOURT: Et je lis -- c'est clair, monsieur
le juge?

LA COUR: Oui.

M. RANCOURT: Vous voyez?

J'ai -- j'ai déjà demandé la permission
devant la Cour d'inclure ces nouvelles
informations et ça va être traité dans la motion
principale parce que, là -- c'est parce que,
dans le débat, il est question à savoir si je
peux utiliser l'information que j'avais mis dans
mon affidavit pour les refus parce que c'est
aussi de l'information que je vais mettre dans
mes autres affidavits.

Et monsieur le juge dit:

« ... mais là, c'est purement une question de

refus de questions. »

Donc, il distingue les deux choses.

Il y a un autre exemple de ça où il fait exactement la même chose, à la page 156 du 'Motion Record'. Vous allez pouvoir lire ---

LA COUR: O.k.

M. RANCOURT: --- le contexte plus tard.

LA COUR: O.k.

M. RANCOURT: N'est-ce pas?

LA COUR: Oui.

M. RANCOURT: Mais à la page 156, si vous allez à la page 156, le Tribunal dit:

« On n'a pas des refus -- décidé
l'admissibilité de ces documents-là. »

Il dit:

« On n'a pas décidé l'admissibilité de ces documents-là. »

Il dit:

« Dans la motion principale, oui, on n'a pas décidé dans la motion principale ... »

et il dit:

« ... alors pourquoi il serait admissible maintenant?

R. Parce qu'ils sont pertinents à la motion
Pour les refus, monsieur le juge ... »

et on continue et, à la fin, un peu plus bas, à la ligne 18, il dit:

« Mais non, je peux pas me fier sur un document sur lequel on n'a pas encore tranché la question d'admissibilité ... »

LA COUR: Vous êtes à la page 156?

M. RANCOURT: Cent cinquante-sept (157)

maintenant parce que j'ai lu en bas de la page 156 et j'ai tourné ---

LA COUR: O.k. O.k. O.k.

M. RANCOURT: Je m'excuse, je vais vite, hein?

LA COUR: Oui.

M. RANCOURT: Parce que j'ai pas beaucoup de temps. Je m'excuse beaucoup de ça.

Donc, vous voyez, j'ai commencé à la page 156, la ligne 30, et j'ai dit:

« ... on n'a pas décidé l'admissibilité de ces documents-là ... »

Ensuite, vous voyez en haut de la page 157:

« ... dans la motion principale, on n'a pas décidé ... alors, pourquoi seraient-ils admissibles maintenant?

R. Parce qu'ils sont pertinents à la motion pour les refus, monsieur le juge. »

Et ça continue et, là, à la ligne 18, le juge dit:

« Mais non, je peux pas me fier sur un document dans cette motion de refus ... »

il veut dire: sur lequel on n'a pas encore tranché la question d'admissibilité.

Donc, il admet que il ne va pas trancher la question d'admissibilité. Ça c'est quelque chose pour la motion principale. Il est en train de le dire là.

Donc, la question de *res judicata* est absurde, contraire à ce qui s'est passé et les critères sont différents.

Et pour la question de qu'est-ce qu'a fourni Monsieur Giroux auquel je fais la

réponse, je vous amène au procès de Monsieur Giroux, au procès-verbal de Monsieur Giroux, si vous permettez.

Alors, je vais au procès-verbal de Monsieur Giroux et je vais à l'onglet 15 du tome 2 de mon 'Motion Record', onglet 15.

Je vais vous montrer des évidences très importantes que Monsieur Giroux m'a données. Est-ce que vous y êtes?

LA COUR: Oui.

M. RANCOURT: Alors, maintenant, je vais à la page 279 dans le tome 2. Donc, 279. Est-ce que vous y êtes?

LA COUR: Oui. Oui.

M. RANCOURT: Et, en haut de la page, il y a un petit « 58 ». on est sur la bonne page?

LA COUR: Oui.

M. RANCOURT: O.k.

Donc, là, à la ligne 5, je lis et je pose la question à Monsieur Giroux:

«Q. Monsieur Giroux, are you aware about a statement in the Statement of Claim that says that part of punitive damages, if awarded, would be donated to this scholarship fund, the "Danny Glover Scholarship Fund? Are you aware of that?"

Et il dit:

"Point number one, I have not read the Statement of Claim. Now, I am aware because Mr. Doody told me."

Et je dis:

"Is this the first time that you become

aware of this fact?

A. As a fact, yes.

Q. How else did you become aware other than as a fact?

A. I don't recall having been made aware of it previously.

Q. So this is the first time you ever heard this?

A. This is ..."

Et il répond:

"This is the first time I have been made aware of it.

Q. What is your reaction to this knowledge?

A. I will not answer that question, it is part of the statement."

il dit.

Et ensuite, un peu plus loin, on revient sur cette question-là, à la page 286.

LA COUR: Deux cent quatre-vingt-six (286)?

M. RANCOURT: Oui, on revient sur cette question un peu plus loin à la page 286, tome 2 de mon 'Motion Record'.

LA COUR: Oui.

M. RANCOURT: Et là, je dis:

« Now that you understand that some of the proceeds could come into the scholarship fund, do you plan to investigate this matter?"

Monsieur Doody dit:

"Don't answer the question, it is not relevant."

Et je dis:

"It is entirely relevant."

Et le témoin dit:

« No, it is not relevant because I -- I would have to think about that and I'm not sure just exactly what I would do. »

Et, ensuite, je dis:

"So at the moment, you are not planning to do anything?"

Il dit:

"I am not planning to do anything."

Et je dis:

"But you are planning to think about it?"

Il dit:

"Certainly, because I have more information."

D'accord?

LA COUR: M'hm.

M. RANCOURT: Alors, ce que je viens d'apprendre ici c'est que le Chef du bureau des gouverneurs de l'Université d'Ottawa qui est le patron de Allan Rock, qui est la seule personne qui a -- qui dirige et qui peut engager et congédier Allan Rock, le Chef du bureau des gouverneurs qui est le 'leader' de la Corporation de l'Université d'Ottawa, on ne lui a jamais dit, avant cette examination en 2012, que cette action allait profiter possiblement d'un retour de l'action; que ça allait venir à l'Université d'Ottawa. On lui a jamais dit.

Et donc, pour moi, c'est de l'évidence que Monsieur Rock qui le savait très bien quand il a informé le Bureau des gouverneurs que il y avait

une telle action, il savait très bien que c'était dans le 'Statement of Claim', il a pas donner cette information cruciale.

Je pense que c'est parce que il ne voulait pas que le Bureau des gouverneurs -- c'est ce que je soumetts -- que le Bureau des gouverneurs a une chance d'éliminer cette action.

Et donc, pour moi, c'est de l'évidence possible de mauvaise foi et c'est -- et ça m'encourage donc et c'est ---

MR. DEARDON: Your Honour ---

M. RANCOURT: --- en réponse à ça ---

MR. DEARDON: Your Honour, I -- Your Honour, I will object.

M. RANCOURT: --- que j'ai ---

MR. DEARDON: I'll sit down. I'm objecting. He's purely speculating. It's not in the evidence ---

THE COURT: This is into -- c'est une spéculation ---

M. RANCOURT: Oui, mais donc c'est -- oui, mais c'est pour dire que j'ai découvert ça et, donc, je viens à la question -- je finis en parlant de la question de champartie.

Pour suivre quelqu'un en justice, monsieur le juge -- là, c'est mes derniers commentaires ---

LA COUR: Oui.

M. RANCOURT: --- pour la question de champartie.

LA COUR: Oui.

M. RANCOURT: Pour suivre quelqu'un en justice,

ce n'est pas la même chose que de se faire poursuivre en justice.

L'Université d'Ottawa a une assurance qui s'appelle « l'Assurance CURIE » pour assurer tous les professeurs qui se font poursuivre en justice mais ils n'ont pas une assurance ni une politique ni un règlement pour qu'un -- pour payer pour qu'un professeur poursuive quelqu'un en justice qui aurait pu diffamer un professeur. Ça n'existe pas. C'était hors contexte.

Et, en particulier, cette -- ils avaient une entente entre les deux. Les deux étaient d'accord: une pour donner l'argent, l'autre possiblement pour la recevoir. Y avait pas une entente écrite mais y avait pas de refus et y a pas eu -- on n'a pas enlevé ce paragraphe dans le 'Statement of Claim'.

Le Président n'a jamais dit: Je ne vais jamais accepter cet argent-là parce que de l'argent public a été utilisé ---

LA COUR: Oui, mais la question c'est: Est-ce qu'il y avait une entente dès que Rock ou l'Université était d'accord de payer les frais?

Ça c'est -- à ce moment-là, est-ce qu'il y avait une entente: On va te payer tes frais légaux si on reçoit 50 pourcent des -- c'est ça la -- d'habitude.

M. RANCOURT: Monsieur le juge, je vous propose la chose suivante: ---

LA COUR: Oui?

M. RANCOURT: --- Si vous regardez la loi de la champartie, ---

LA COUR: Oui?

M. RANCOURT: --- on dit jamais: il faut qu'il y ait une entente. On dit: « They agree to ».

Ça, ça veut dire, évidemment, on peut -- on peut être d'accord -- que ça soit oral, que ça soit entendu ---

LA COUR: Ça peut être oral ---

M. RANCOURT: --- il y a pas nécessairement quelque chose ---

LA COUR: Non, par écrit ---

M. RANCOURT: --- de formel ---

LA COUR: --- c'est pas nécessaire par écrit mais il faut qu'y ait une entente ---

M. RANCOURT: Ils ne refusent pas.

Donc, en Ontario ---

LA COUR: Ils disent qu'y refuseront pas les argents si quelqu'un -- si ça tombe du ciel ou quelque chose, bon, y vont l'accepter peut-être mais ...

M. RANCOURT: C'est le point et, donc, en Ontario, il y a un loi très stricte, ça s'appelle « an act respecting champerty ».

C'est quelque chose que mes amis n'ont pas mentionné mais il y a une loi en Ontario qui est en vigueur et qui dit -- je paraphrase peut-être un peu mais: All champertous agreements are invalid.

C'est contre la loi de faire ça.
« Champertous », ils disent pas « all champerty », y disent « champertous agreements ». Ils le caractérisent comme ça.
C'est conte la loi en Ontario. Il y a des ---

LA COUR: Il y a pas d'entente. Selon eux, il y a pas d'entente.

M. RANCOURT: D'accord, j'ai compris leur argument, monsieur le juge.

LA COUR: Il y a pas de *quid pro quo*. C'est latin.

M. RANCOURT: Donc, voici ce qui s'est passé d'après eux.

Ils ont eu une rencontre le 13 avril qui a duré une demi-heure d'après le procès-verbal de Monsieur Feldthusen. Une demi-heure.

Et, en fait, le document montre très bien que ça duré une demi-heure.

J'ai pas le temps de vous montrer le document mais le document montre que ça -- c'est que -- que c'était optionnel que le -- en tout cas, je vais vous le signaler ---

LA COUR: Oui.

M. RANCOURT: --- le document.

LA COUR: Le document ou le cite ou le ---

M. RANCOURT: Oui.

LA COUR: --- les détails.

M. RANCOURT: Si je me trompe pas, c'est dans le Volume 4 à l'onglet 21. Je vais juste vérifier que je vous donne le bon document pour que vous puissiez le consulter plus tard.

(COURTE PAUSE)

THE COURT: You've got to go? Okay, we're losing our Registrar.

THE REGISTRAR: I don't know if you want to close right now or ...

LA COUR: Monsieur Rancourt, are we just winding

up? On finit-tu? Parce que là, c'est 5h10.

M. RANCOURT: Je -- moi, je prendrais un autre cinq minutes c'est sûr là parce que je suis dans le milieu de ma pensée.

Évidemment, il y a un peu de perte de temps parce que je cherche le document pour vous signaler lequel et tout ça.

LA COUR: Et est-ce qu'on peut continuer ça?

Mr. Registrar?

THE REGISTRAR: Five minutes?

THE COURT: Hum? So five minutes, yes?

M. RANCOURT: Non, on demande si on peut continuer sans vous.

THE COURT: I think we'll just note that the registrar had to leave.

Are there any objections that we proceed without the Registrar?

MR. DOODY: No objection, Your Honour.

THE COURT: For five minutes and there will be a transcript recording about everything that's done.

So someone will close up the courtroom, presumably, whether we have -- the CSO will look after that?

So you're excused then.

THE REGISTRAR: Yes, thank you, Your Honour.

(THE REGISTRAR LEAVES THE COURTROOM)

LA COUR: Monsieur Rancourt, cinq minutes.

M. RANCOURT: Mais maintenant qu'il y a pas de limite ---

LA COUR: Non, non, non.

M. RANCOURT: Non, non, d'accord.

LA COUR: C'est pas ce que j'ai dit.

M. RANCOURT: O.k., donc, voici d'après eux ce qui s'est passé.

Dans un meeting de une demi-heure, le 15 avril, personne présent avait lu l'article blog en question. Ils ont tous dit ça qu'ils n'avaient pas lu l'article blog en question pour le meeting du 15 avril. Personne l'avait lu.

LA COUR: Madame l'avait lu le 8 ---

M. RANCOURT: Non.

LA COUR: --- le 8 avril.

M. RANCOURT: Non. Non. Non, elle a été consciente que le mot 'house negro' apparaissait en quelque part sur le web mais elle a juré qu'elle n'a jamais lu l'article blog avant le -- elle l'avait pas lu le 15 avril. Personne l'avait lu.

Ça c'est très clair, c'est dans l'évidence. C'est pas -- c'est pas contesté entre eux.

O.k., donc, personne avait lu l'article. Personne a eu une discussion ou une considération sur combien d'argent ça pourrait coûter. Ça n'a pas été un sujet de la conversation.

Et c'était pour poursuivre -- le motif qu'ils ont annoncé c'était pour poursuivre un ancien professeur à cause de son attaque raciale et qu'ils avaient une obligation morale, d'après la lettre de Monsieur Scott, pour faire ça.

Et je vous dis que une poursuite, monsieur le juge, avec de l'argent public ce n'est pas une façon de régler les problèmes de racisme

dans la société et ce n'est pas -- il y a pas une obligation morale.

Monsieur -- Monsieur le président de l'université, Allan Rock, a parlé de un principe qu'il devait suivre. Eh bien, je vais vous dire ce qu'il doit suivre, il doit suivre *The University of Ottawa Act*.

Et si on va au *University of Ottawa Act*, si vous allez dans mon 'Book of Authorities', si vous pouvez regarder l'acte en question ---

MR. DEARDON: Your Honour, I'm putting an objection because this is not proper reply.

THE COURT: I don't think it was raised.

C'était pas soulevé ---

M. RANCOURT: Je suis en train de -- de -- j'ai pas eu la chance de conclure mon -- ma présentation, le cas de ce qui s'est passé, que je dis que c'est de la -- champartaux et j'ai ici le *University of Ottawa Act* ---

THE COURT: Okay, well, I'll let you go ahead on it but I'm not saying that I'm -- c'est pas vraiment des -- c'était pas soulevé par vous ni ---

M. RANCOURT: C'est soulevé par eux que les motifs d'Allan Rock sont tout à fait corrects ---

LA COUR: Oui.

M. RANCOURT: --- et qu'il avait le droit de faire ça.

LA COUR: Oui.

M. RANCOURT: Et je suis en train de mettre ça en doute avec *l'Acte de l'Université d'Ottawa*;

o.k.?

LA COUR: O.k., allons-y.

M. RANCOURT: Et voici -- et voici, si vous regardez à l'onglet 27, il y a l'Acte de l'Université d'Ottawa, le statut qui régimente l'Université d'Ottawa dans mon 'Book of Authorities'.

Je n'ai pas le temps de vous montrer tout ça maintenant mais c'est clair dans l'Acte que le patron, le chef -- c'est le Chef du Butreau des gouverneurs. Ce n'est pas Allan Rock.

Et, très important, si vous regardez le paragraphe 8 de cet Acte, à la troisième page que je mets là, je vais le lire le paragraphe 8:

« The management, discipline and control of the university shall be free from the restrictions and control of any outside body, whether lay or religious, and no religious test shall be required of any member of the Board but such management, discipline and control shall be based upon Christian principles. »

L'Acte dit que les décisions doivent être gérées selon des principes chrétiens pas le principe d'Allan Rock que on doit poursuivre Denis Rancourt parce qu'il a diffamé quelqu'un mais le -- mais des principes chrétiens.

Et un des plus grands principes chrétiens, monsieur le juge, c'est le pardon ---

LA COUR: Non, mais c'est pas ça ---

M. RANCOURT: --- le pardon et de tourner l'autre joue ---

LA COUR: Oui, mais pas ---

M. RANCOURT: --- et c'est le contraire de faire une attaque pour poursuivre quelqu'un.

Dans les ---

LA COUR: Mais personne a demandé pardon.

M. RANCOURT: Dans les principes chrétiens, on n'attaque pas, on ne poursuit pas. On -- on peut subir des choses et on tourne l'autre joue et on continue à interagir dans la société. C'est ça le principe chrétien.

S'il veut -- si Monsieur Rock veut parler de principes sur lesquels il s'est basé, il doit se référer à l'Acte parce que il y a pas de politique qui lui permet de faire ce qu'il a fait et, donc, il y a ce principe qui guide qui est ce principe chrétien.

Et en plus, il y a aucun document qui montre la nature de cette entente. Tout est oral. Il y a pas moyen -- il y a pas moyen de voir même les papiers qui montrent les paiements, qui montrent qui demandent les paiements à qui.

Il y a Monsieur Feldthusen qui dit -- et ça c'est très intéressant -- Monsieur Feldthusen qui dit -- je demande:

« Mais qui aurait consulté Monsieur Deardon?

Bien, il pouvait pas répondre. Il disait:

« Ben, euh, ben, le client. »

Il était très évasif, il parlait du client.

MR. DEARDON: Your Honour, he is now getting into areas where he was ruled that you couldn't

ask these questions. It has nothing to do with reply and his extra -- well, his extra 15/20 minutes is up.

LA COUR: On dépasse les lignes ---

M. RANCOURT: Les lignes que vous avez imposées.

LA COUR: Je ne suis pas -- je ne suis pas contre les principes chrétiens et puis je pense c'est -- si l'Université les suit, ça c'est leurs affaires.

Et puis -- mais ça c'est -- ça c'est -- ça c'est un peu hors de mes compétences, en plus.

Mais je pense qu'on est -- qui est-ce qui a demandé paiement? J'imagine c'est Monsieur Deardon qui va demander paiement.

M. RANCOURT: Je ---

LA COUR: À un moment donné ---

M. RANCOURT: Je sais pas mais ---

LA COUR: --- pour ses services.

M. RANCOURT: Non, mais à qui? Moi, je -- moi, je dis directement à l'Université, c'est évident.

LA COUR: C'est pas un secret s'il fait ses devoirs pour Madame St. Lewis, à un moment donné, il va -- il va envoyer une facture, j'imagine.

Mais ça c'est hors, je pense, de -- d'un autre ---

M. RANCOURT: Est-ce que je peux vous montrer un dernier document que vous n'avez pas vu ---

LA COUR: Bien, on dit là c'est quoi -- c'est quoi le document?

M. RANCOURT: C'est le tome 4. C'est quand même

un document très important. J'aimerais vraiment que vous jetiez un coup d'œil.

C'est le tome 4 et c'est le document à l'onglet 21, si je me trompe pas -- ah là là, c'est-tu le bon? C'est pas le bon?

Attendez un seconde. Donnez-moi une seconde, je vais le trouver.

O.k., o.k., non, je vais le trouver.

MR. DOODY: While my friend is looking, I may say only in response to the Section 8 of the *University of Ottawa Act* -- perhaps Mr. Rancourt might have looked at Section 4(e) of the Act which says that:

"... the objects and purposes of the University are to further in accordance with Christian principles, the intellectual, spiritual, moral, physical and social development of as well as the community spirit among its undergraduates, graduates and teaching staff and to promote the betterment of society ..."

and I would have thought that the motives of the university exemplify those objects.

M. RANCOURT: Je pense que le -- je pense que -- si j'ose me permettre, je pense que le principe chrétien ne serait pas de arriver à ces fins-là en attaquant et en faisant une poursuite contre quelqu'un.

Et donc, je pense que Monsieur Doody se trompe par rapport au principe chrétien sur ce point-là.

Mais -- mais le document que je veux vous

montrer, je l'ai trouvé, et c'est -- c'est à l'onglet 24 du tome 4. Je tiens à vous montrer l'onglet 24 du tome 4.

LA COUR: Selon vous, les actions, les poursuites sont contre les principes chrétiens?

M. RANCOURT: Une attaque. Une attaque.

LA COUR: Non, c'est une -- je -- je retire cette -- cette question parce que on -- c'est notre devoir, des gens qui se poursuivent l'un et l'autre devant nous à la journée longue.

Donc ...

M. RANCOURT: Non, une poursuite pour arriver à une séparation équitable versus une attaque ---

LA COUR: Oui.

M. RANCOURT: --- où on va chercher quelqu'un pour se -- pour leur extraire quelque chose de sorte à se redonner quelque chose c'est contre les principes chrétiens.

Et, donc -- mais je tiens pas à ce que vous le preniez personnellement, monsieur le juge.

LA COUR: Non, non. Ah, non, non.

M. RANCOURT: Mais je veux aller à l'onglet 24 ---

LA COUR: Onglet 24?

M. RANCOURT: --- et je veux aller à la page ---

LA COUR: Une minute. Une minute.

M. RANCOURT: On est dans le tome 4 puis je veux vous amener à la page 203.

LA COUR: Ça c'est une lettre de Monsieur Doody, justement.

M. RANCOURT: Oui, c'est une lettre de Monsieur Doody et, un peu plus loin, à cet onglet-là,

c'est Monsieur Doody qui me donne les documents que Allan Rock a fournis; d'accord?

Et à la page 203, c'est un document que Allan Rock a fourni, je tiens à vous montrer ce document.

MR. DOODY: Your Honour?

M. RANCOURT: Est-ce que vous y êtes?

MR. DOODY: Your Honour? Your Honour, this is important.

These documents were put in the record by Mr. Rancourt. They have not been admitted into evidence in any way, shape or form. They were documents delivered pursuant to a document demand. They are not entered into evidence.

Your Honour is well aware, of course, -- Mr. Rancourt, I suggest, is as well -- that the rules require with these document demands you deliver the relevant documents but that doesn't make them evidence.

THE COURT: Right.

M. RANCOURT: Bien, je -- j'ai -- j'ai -- j'ai travaillé sous la supposition que ces documents-là pouvaient être mis dans on 'Motion Record'; ce que j'ai fait.

J'ai toujours travaillé sur la supposition et, aussi, il y a des autorités ---

LA COUR: C'est quoi -- c'est quoi le point? C'est quoi votre représentation?

M. RANCOURT: Alors, mon point ---

LA COUR: Fais le point et puis ---

M. RANCOURT: --- est que ce document est très important.

LA COUR: O.k.

M. RANCOURT: --- et il -- je pouvais pas -- je pouvais pas mettre ce document dans un affidavit parce qu'il m'a été donné lors -- le jour même de l'examination de monsieur Allan Rock.

Donc, c'est clair que c'est la seule façon de le mettre en évidence c'est, par après, de le mettre en évidence. Je vois pas d'autre façon.

LA COUR: Mais c'est quoi le -- le point?

M. RANCOURT: Alors, ici, regardez c'est très -- c'est très important.

MR. DOODY: Just to be clear, the Notice -- the Notice of Cross-Examination required that Mr. Rock deliver the documents on the day of the examination. That's what happened.

Before he was cross-examined, the documents were in Mr. Rancourt's hands. He could have asked for time to look at them and then put them to Mr. Rock.

The rules were followed. Mr. Rancourt had ample opportunity to do whatever he wanted with these documents ---

M. RANCOURT: Ça c'est ---

MR. DOODY: --- if he could put them into evidence.

M. RANCOURT: Ça c'est une -- un point technique et procédural auquel j'étais pas au courant à l'époque où j'ai fait ça. Certainement pas.

Et je comprends ce que Monsieur Doody dit mais, moi, j'ai toujours cru que je pouvais mettre ça en évidence.

C'est clair pour moi, j'ai demandé les

documents, on me les a donnés. Ils sont pertinents. De toute évidence, je les mets en évidence.

LA COUR: Mais c'est quoi votre point?

M. RANCOURT: Alors, mon point est le suivant.

LA COUR: J'ai noté l'objection de Maître Doody.

M. RANCOURT: Mon point est le suivant: Si vous regardez ce document, c'est le document qui explique comment la rencontre du 15 avril 2011 a été faite.

Et si vous regardez la première page, c'est monsieur Allan Rock qui a organisé le meeting et ça dit:

« Meeting with Bruce Feldthusen, AR ... »

Ça veut dire Allan Rock et c'est un meeting qui est cédulé pour une demi-heure, de 11h00 a.m. le 15 à 11h30. C'est un meeting de une demi-heure.

Et regardez:

« Required attendees: Allan Rock, Bruce Feldthusen. Optional attendees: Joanne St. Lewis, Richard Deardon. »

On savait déjà à l'époque quand on a demandé ce meeting que Richard Deardon pourrait peut-être venir au meeting.

Et ensuite -- donc, ça été approuvé le 11 avril ce meeting-là. Et si vous regardez le courriel de la page d'après qui a donné lieu à cette -- à cet agenda du meeting, c'est un -- c'est un courriel qui vient de Danny Chung qui est du bureau de la Faculté et qui est intitulé « Meeting with President Rock » et ça dit:

« Hi, Marie-Josée, Dean Feldthusen would

like to schedule a meeting with Mr. Allan Rock pertaining a subject matter which I'll summarize as deflamation action ..."

C'est ce qui est écrit là:

« He will be accompanied by Professor Joanne St. Lewis. Dean Feldthusen will call Stéphane Émard Chabot sometime today for more details. In the meantime, could we -- could you please let me know if either of the following time is convenient for Mr. Rock? Thank you."

Donc, là, on voit que c'est le Doyen qui organise le meeting et qu'il va parler au Chef du Président, Monsieur Émard, avant le meeting. C'est lui qui fait ça.

Et je veux vous signaler -- ça c'est très important -- le Doyen est un officier de l'université. C'est pas un simple professeur. Il fait pas partie de l'Association des professeurs, c'est un exécutif de la corporation. Il travaille, il fait partie intégrale de la corporation et je dis que lui et Allan Rock ensemble sont ceux qui ont fait cette chose-là.

J'ai déjà montré des documents ce matin qui expliquaient leur -- leur planification et leur connivence contre moi. Vous vous souvenez de ces documents-là et, donc, ça c'est ---

MR. DEARDON: I object.

M. RANCOURT: --- c'est un point ---

MR. DEARDON: I object to what he just said, Your Honour.

M. RANCOURT: --- important.

MR. DEARDON: And also, again, this was not a document he put to Dean Feldthusen or to Mr. Rock, Mr. Doody is telling me, so ...

THE COURT: It's not part of this cross-examination on the affidavit.

MR. DEARDON: No.

THE COURT: It's never been commented on.

MR. DEARDON: No.

LA COUR: Si vous l'avez pas questionné sur ---

M. RANCOURT: Ça c'est une question procédurale, monsieur le juge.

LA COUR: Mais là ---

M. RANCOURT: Je ne peux pas savoir ça.

LA COUR: Il y a pas ---

M. RANCOURT: Moi, je demande -- je demande des documents qui sont pertinents. On me refuse tout parce que c'est pas pertinent. On me donne quelques affaires de toute évidence qui, d'après eux, sont pertinents.

Je les reçois et je ---

LA COUR: Mais vous avez pas posé de questions sur ces documents.

M. RANCOURT: --- et je les mets -- je leur ai donné il y a plus de deux semaines dans mon 'Motion Record'. Ils auraient pu répondre. Ils ont rien fait.

Ils sont là les documents et je l'utilise.

LA COUR: Mais vous l'avez pas questionné les deux ---

M. RANCOURT: Monsieur le juge, j'avais ---

LA COUR: --- soit Monsieur Giroux ou Monsieur

Rock.

M. RANCOURT: Monsieur le juge, ---

LA COUR: Donc, y sont pas identifiées ni ---

M. RANCOURT: Je vous ai -- je vous ai montré.

LA COUR: C'est du oui-dire. Je crois que c'est du oui-dire.

M. RANCOURT: Monsieur le juge, je vous ai montré un livre d'autorités about 'self-represented litigants'.

LA COUR: Non ---

M. RANCOURT: Non, mais la raison que je -- juste, un point, deux phrases.

MR. DEARDON: No, I ---

M. RANCOURT: La raison que je voulais vous montrer ça ---

MR. DEARDON: I object, Your Honour.

M. RANCOURT: --- c'est parce que c'est plein d'autorités qui expliquent ---

MR. DEARDON: No, Mr. Rock ---

M. RANCOURT: On ne peut pas enlever de l'évidence à des personnes auto-représentées pour des raisons procédurales. Ça -- ce n'est pas selon la justice et, donc, je voulais vous signaler les paragraphes qui disent ça là-dedans ---

LA COUR: O.k.

M. RANCOURT: --- mais j'ai pas eu la chance de vous signaler quel paragraphe.

LA COUR: Je vais m'en -- je vais le noter.

M. RANCOURT: Il va falloir tout le lire parce que j'ai pas eu la chance de vous présenter toutes ---

MR. DEARDON: Your Honour, could I -- I'm assuming that arguments are now finished?

THE COURT: They're finished.

MR. DEARDON: Your Honour, can I write you about a case management -- setting up a case management ---

THE COURT: Another one?

MR. DEARDON: Yes, because Mr. Rancourt has two more Leave Applications out on your decisions and he's set dates which he's not supposed to.

But, anyway, I want to put it in a letter about, you know, let's have a case conference and let's decide who is going to -- you know, where those go ---

THE COURT: Okay, on ---

MR. DEARDON: And he won't also agree as to form and content on your Cost Order that you made to me so I want to ---

THE COURT: So I will -- no problem on setting Cost Orders or any orders for that matter that can't be -- I'll settle them. You know, if you can't agree on them, I'll settle them, as I said.

Moi, je vais les régler, c'est sûr.

But -- and for future, we probably -- I was thinking in the New Year, after these things are decided, and a further case conference to -- pour les prochaines étapes ---

M. RANCOURT: Oui.

THE COURT: --- for the next steps that we'll follow.

But whether I should sit on or be involved

in Leave to Appeal of my decisions, to me,
that's ---

MR. DEARDON: To assign them -- well, what he's
done is he's got a date for January 17th and
another one for February 7th, I think.

THE COURT: It should ---

MR. DEARDON: He did not consult me on.

THE COURT: They could be consolidated and they
should be set. There may be timing issues but I
-- parties have a right to appeal my decisions.

M. RANCOURT: Oui.

THE COURT: I accept that as part of the -- of
the game. That's part of the way things are.

And leave to appeal and that's -- but I
don't think I should have any -- I'm not going
to ---

M. RANCOURT: Je suis d'accord, monsieur le
juge.

MR. DEARDON: The assigning of the date.

M. RANCOURT: Je suis d'accord, monsieur le
juge.

MR. DEARDON: Or should I write the Regional
Senior Justice?

THE COURT: I wonder if it shouldn't be to the
Regional Senior ---

MR. DEARDON: I just want ---

THE COURT: --- for appeals of my decisions. I
don't think I should be the one deciding on
those things, frankly ---

M. RANCOURT: Mais, monsieur le juge?

THE COURT: --- that the parties have the rights
-- either party may choose to appeal my

decisions ---

M. RANCOURT: Si je peux?

THE COURT: And that's okay. That's okay.

M. RANCOURT: Si je peux, monsieur le juge?

LA COUR: Je crois que ---

M. RANCOURT: Je ---

LA COUR: Attends.

M. RANCOURT: Oui.

THE COURT: You can write to the Regional Senior about any issues of appeals and I think that should be done through him.

MR. DEARDON: Yes, I'll write ---

THE COURT: Scheduling the appeal should be done with his permission because, otherwise, we'll have multiple appeals of various decisions which, you know, I have a couple of other refusals -- so what, there will be Leave to Appeal and whether we -- it's appropriate to bundle them up together or whether timing is an issue for answers on them or appeals.

So I think the scheduling of appeals of my decisions should be made by the Regional Senior.

MR. DEARDON: So I will write him ---

THE COURT: Yes, you may write him as a ---

M. RANCOURT: Il y a ---

THE COURT: And there should be some thought to this Rule 104 that I mentioned earlier.

M. RANCOURT: Attention, monsieur le juge ---

THE COURT: That it's efficient and not wasting, you know, time. We should be moving the matter forward in a fair and efficient manner.

That is the overriding principle that I

would try to be ---

M. RANCOURT: Mais, monsieur le juge, il y a une information importante là que vous manquez peut-être.

Le Juge Hackland nous a interdit de communiquer avec lui sauf pour urgences. Les deux parties.

LA COUR: O.k.

M. RANCOURT: Ça c'est première chose.

Et deuxièmement, les motions ---

LA COUR: O.k., première chose, je vais vous aviser par courriel -- I'll speak to the Regional Senior and, if he wants to assign someone else or if he wants to be involved; how about that?

M. RANCOURT: Oui.

LA COUR: Je vais le faire. Je vais lui en parler de dire comment est-ce qu'y veut arranger ça.

Moi, je -- je me sens un peu mal à l'aise to be involved in, you know, say, refusing to schedule appeals of my decisions, for example.

M. RANCOURT: Non, mais ---

THE COURT: I don't think -- I don't that would be ---

M. RANCOURT: Merci.

LA COUR: Bon, je fais ça comme ---

M. RANCOURT: Non, mais je suis d'accord.

LA COUR: --- un commentaire ...

MR. DEARDON: Thank you, Your Honour.

THE COURT: I think it should be someone else dealing with my appeals whatever they may be and

whatever parties may choose to advance as grounds ---

M. RANCOURT: Mais, monsieur le juge, ---

THE COURT: --- those are ---

M. RANCOURT: Mais ---

THE COURT: Those aren't really for me to be dealing with. It's my thought. It's my thinking so ...

MR. DEARDON: Thank you, Your Honour.

THE COURT: Okay. Thank you.

M. RANCOURT: Monsieur le juge, Monsieur Deardon, a demandé une question de 'case management' et j'en ai une moi aussi. C'est la suivante: Il y a -- Monsieur Deardon veut un ordre pour les coûts contre moi et j'ai jamais eu la chance de montrer des preuves complètes avec documents de la banque, et cetera, que je n'ai pas d'argent ---

LA COUR: Bon ---

M. RANCOURT: --- et, donc, je voudrais avoir la chance de montrer ça avant pour qu'on trouve une façon équitable par rapport à ces coûts ---

MR. DEARDON: No, Your Honour ---

LA COUR: Non, non. Non, non. Non, non, non. Non.

M. RANCOURT: --- que vous allez ordonner.

MR. DEARDON: But it's answering an order that's been made.

M. RANCOURT: On peut ---

MR. DEARDON: Answering an order that's been made.

Mr. Rancourt, that's just totally unfair

what you're trying to do here.

M. RANCOURT: Qu'est-ce que ---

MR. DOODY: Your Honour?

Your Honour, may I say something? I've said very little.

With the greatest of respect to Mr. Rancourt, this is completely inappropriate.

Your Honour has made orders. He has filed an application for Leave to Appeal Your Honour's order as he has entitled to do with respect to cost ordered against Mr. Deardon.

He's not yet filed an Application for Leave to Appeal with respect to an order which I received a few days ago. I would not be surprised to get that.

But he ought not to be, in my respectful submission, telling the Court reasons why the order ought not to be issued.

It's been made ---

THE COURT: No, the orders are made.

MR. DOODY: All we need to do now is set the form and move on and he has his remedies and we will have submissions to make at the appropriate times.

But Mr. Rancourt, with the greatest of respect, needs to stop talking.

THE COURT: I think we all -- we're -- it's 5:30, c'est 5h30, so ...

THE COURT CLERK: Order, all rise.

MR. DEARDON: Thank you, Your Honour.

M. RANCOURT: Merci.

--- Upon adjourning at 5:33 p.m.

C E R T I F I C A T I O N

I, Johanne Laporte, court reporter in the Province of Ontario,
hereby certify the foregoing pages to be an accurate
transcription of the notes/recordings, taken to the best of my
5 skill and ability, and I so swear:



Johanne Laporte

Je, Johanne Laporte, sténographe officielle, certifie que la
10 présente est une transcription conforme de mes notes et
enregistrements au meilleur de mes capacités, et je le jure.



Johanne Laporte

15 TRANSCRIPT REQUESTED: December 13, 2012

TRANSCRIPT COMPLETED: February 25, 2013

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SUPERIOR COURT OF JUSTICE

5 B E T W E E N :

JOANNE ST. LEWIS

Plaintiff

10 - and -

DENIS RANCOURT

Defendant

15 P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE SMITH
on February 25, 2013, at OTTAWA, Ontario

20

25

30 APPEARANCES:

Dearden, Mr.

Counsel for the Plaintiff

Rancourt, Mr.

Self Represented

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Transcript Ordered:. February 28, 2013
Transcript Completed:. June 28, 2013
Ordering Party Notified: July 2, 2013

1.
St. Lewis v. Rancourt

MONDAY, FEBRUARY 25, 2013

THE COURT: Good morning.

MR. DEARDEN: Good morning, Your Honour.

LE TRIBUNAL : Bonjour.

M. RANCOURT : Bonjour, Monsieur le Juge.

THE COURT: So now, those decisions, I've - you will have my decisions very shortly. They're in draft form. I know there's three of them that are still - il y a trois décisions qui sont en marche, mettons, donc tu pourras les avoir d'ici deux semaines.

M. RANCOURT: Ah oui, parce que y'a deux refus pour des découvertes, c'est ça?

LE TRIBUNAL: Découvertes. Vous avez un; Me Dearden aussi en a une et la motion de champerty, donc c'est trois là.

M. RANCOURT: Et ces décisions seront sorties d'ici deux semaines?

LE TRIBUNAL: Oui, c'est ça. Bon - si vous avez de l'aide avec les horaires ou des - des - donc c'est - c'est pour établir un horaire - to set a schedule or timetable for future steps, is that our - c'est ça nos buts? Est-ce qu'il y a des propositions de quelque part, de quelqu'un ou....

M. RANCOURT: Oui, Monsieur le Juge. Donc, il y a deux motions pour demander d'aller en appel...

LE TRIBUNAL: Oui.

M. RANCOURT: ...qui était devant nous et qu'on devait cédule aujourd'hui.

LE TRIBUNAL: Okay.

2.
St. Lewis v. Rancourt

5 M. RANCOURT: Une des deux était par rapport à des questions de coût de votre part et on a réglé cette motion, monsieur Dearden et moi avons eu des échanges et nous avons réglé cette motion, donc elle n'est pas - on n'a pas besoin d'une date pour entendre cette motion; elle est déjà réglée.

LE TRIBUNAL: Okay.

10 M. RANCOURT: J'ai - j'avais - j'avais - j'ai soumis une offre pour régler et essentiellement cette offre a été acceptée.

15 Et puis, la deuxième motion, c'était par rapport avec les refus de madame Gervais, dans la motion pour découverte - une des motions de refus pour les découvertes et donc, j'ai demandé d'aller en appel de votre décision par rapport au refus de madame Gervais et donc cette motion-là est à - on a à trouver une date pour cette motion-là et j'ai ici mon calendrier et je propose la chose suivante: 20 malheureusement, dans la notice de motion pour cette motion, j'avais dit que je voulais utiliser des «Court transcripts», des transcriptions de la Cour qui - dont un des deux que je voulais, vient d'être prêt il y a à peine quelques jours et l'autre, je ne l'ai pas encore. Et donc...

25 MR. DEARDEN: Which one are those?

30 M. RANCOURT: ...et donc, c'est les deux transcripts (sic) qui sont mentionnés dans la notice de motion, qui est très clairement dit dans la notice de motion.

MR. DEARDEN: Mr. Rancourt, I wonder if you could humour me then and tell me the dates of the two

3.
St. Lewis v. Rancourt

transcripts that you're informing the Court aren't available yet?

5 M. RANCOURT: Alors, je vais sortir la notice de motion de - je sais pas si - je sais pas si c'est important les dates précises, Monsieur le Juge, mais le - mon seul point c'était que vue que j'ai - je viens d'obtenir un des deux transcripts (sic) qui est le plus important des deux là pour moi...

MR. DEARDEN: Which ones?

10 M. RANCOURT: ...je vais besoin de plus de ça.

LE TRIBUNAL: Ça c'est une motion - ça c'est la motion de madame...

M. RANCOURT: Oui.

LE TRIBUNAL: ...Gervais?

15 M. RANCOURT: Oui.

LE TRIBUNAL: C'est la question de Gervais, donc - est-ce qu'on avait eu deux dates pour - deux dates d'audience?

20 M. RANCOURT: Non, on cherche une seule date, Monsieur le Juge...

LE TRIBUNAL: Oui.

M. RANCOURT: ...pour une motion pour aller en demande d'appel...

LE TRIBUNAL: Oui.

25 M. RANCOURT: ...pour la motion de refus, des refus de madame Gervais qui est une motion de la plaignante. Donc, on demande d'aller - de faire une demande d'appel concernant votre décision....

LE TRIBUNAL: Oui - non, j'ai compris ça.

30 M. RANCOURT: Oui.

LE TRIBUNAL: Mais ces questions de transcriptions...

M. RANCOURT: Oui?

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LE TRIBUNAL: ...Me Dearden demande de quelle date.
Est-ce que c'est ça la question, transcription
de....

5 M. RANCOURT: Me Dearden a une copie de la notice de
notion. Il sait exactement de quelle transcription
on parle.

MR. DEARDEN: Okay, Your Honour, if I could, please,
if I could - Mr. Rancourt, you can sit down, please.
The concern is....

10 LE TRIBUNAL: Tu peux t'asseoir. Un à la fois.

M. RANCOURT: D'accord.

LE TRIBUNAL: Ça va mieux de même.

MR. DEARDEN: The concern is this, Your Honour, we
argued the Gervais refusals motion on before you on
15 October, 30th, okay, and you issued your decision
December the 7th. And yesterday Mr. Rancourt e-
mails me in an attempt to actually cancel today's
case conference because he didn't have these
transcripts - or the transcript that I thought he
20 was only referring to the argument of October 30th
and hence....

M. RANCOURT: La question, Monsieur le Juge, était
si....

LE TRIBUNAL: Non, juste attendre, juste attendre.
Je vais...

25 M. RANCOURT: Si j'entends des choses qui sont
fausses, est-ce que je devrais m'objecter, parce que
je n'ai pas essayé...

MR. DEARDEN: It's not false.

30 M. RANCOURT: ...je n'ai pas essayé de canceller
(sic) de toute façon. J'ai suggéré avec bonnes

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raisons, j'ai des courriels ici, de recéduler (sic) et....

LE TRIBUNAL: Mais je dois entendre Me Dearden. Je vais vous entendre en réplique....

M. RANCOURT: Je n'aime pas les choses fausses qui sont dites, Monsieur le Juge.

MR. DEARDEN: Just for the record, Your Honour, because you never know what this defendant is going to do with the transcripts, he wrote me an e-mail on the 24th of February, the fourth paragraph said,

"I suggest we agree to reschedule the case conference as this would likely provide some judicial economy."

He wanted to cancel this one and put it off until we got the transcripts. Now, I thought it was the October 30th transcript and that's why I'm asking him what's the other transcript you're saying isn't done yet? My concern, Your Honour, is again we can never come to a case conference without an attempt to delay things. The concern I have, Your Honour, is twofold. First of all, you know that you know the rules contemplate that there will be a status notice that goes out two years from the date of the statement of defence and we're getting pretty close to that two year anniversary, which is this summer, okay, that it would dismiss it for not being set down for trial within two years. We're getting dangerously close to that two year period. Secondly, Mr. Rancourt is now on a campaign of cyber-bullying against Professor St. Lewis.

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M. RANCOURT: Objection, Monsieur le Juge. Vous n'allez pas entendre ces allégations qui sont fausses.

MR. DEARDEN: You were asked to let me make my submissions, Sir.

M. RANCOURT: Ce sont...

THE COURT: Just a second. Attend, attend.

M. RANCOURT: ...ces allégations, vous ne devez pas entendre ça. C'est entièrement préjudiciable....

LE TRIBUNAL: Non. Non, on ne finira jamais. Je veux entendre - vous aurez le droit de répliquer. Je sais pas si c'est pertinent ou non dans...

M. RANCOURT: Ce n'est pas pertinent, Monsieur le Juge. C'est complètement - et c'est ce genre de tactique que je subis à chaque fois. On - on - on....

LE TRIBUNAL: Mais je suis pas le juge de procès....

M. RANCOURT: On fait des allégations - et justement, justement.

LE TRIBUNAL: De toute façon, je ne suis pas le juge de procès...

M. RANCOURT: Exactement.

LE TRIBUNAL: ...donc, est-ce que c'est exact ou pas exact ou vous avez un autre - c'est une perception de Me Dearden ou de madame St-Louis - St-Lewis - donc de toute façon, je veux compléter - c'est d'établir un horaire, ici...

M. RANCOURT: Oui.

LE TRIBUNAL: ...ce matin...

MR. DEARDEN: And that's my point, Your Honour.

THE COURT: Yes.

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5 MR. DEARDEN: My point of saying this is not so that
my - Mr. Rancourt can stand up and say I'm saying
false things to this Court, which I'm not. There is
urgency in getting this case to trial, because he's
cyber-bullying my client and he's doing everything
he can to try to delay. We argued this refusals
motion on October 30th and the day before this case
conference he tells me, "Oh, I don't have the
10 transcripts." I would have done all kinds of things
to make sure we had the transcripts. I had no
knowledge that we didn't have the transcript. But
that's what he's trying to do. So he was - first
move was, let's cancel today's case conference and I
refused and now I'm....

15 THE COURT: Okay, no, I want to set a schedule for...

MR. DEARDEN: Yes.

THE COURT: ...a reasonable schedule for both
plaintiff and....

20 M. RANCOURT: Oui. J'aimerais suggérer une date...

MR. DEARDEN: And I want it as soon as possible is my
point, Your Honour.

THE COURT: To set the schedule for moving forward
to....

MR. RANCOURT: Oui.

25 THE COURT: Settlement conference might be an option.

M. RANCOURT: J'étais...

LE TRIBUNAL: Mediation - t'as fait la mediation, I
mean would a settlement conference be a - anyway,
you're in the appeal mode at this....

30 M. RANCOURT: Oui, pour l'instant...

LE TRIBUNAL: Mais des affaires - des affaires - ça
c'est - vous avez le droit de faire des choses mais

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pour avancer une cause, questions aux examens au
préalable, c'est ces commentaires dirigés à Me
Dearden, tant qu'à vous comme - est-ce que c'est pas
- c'est pas le juge de procès ça là. Ça c'est pas
le procès. Vous avez l'information pas mal
essentielle de votre position, la position de Me -
moi j'ai l'essentiel, je crois, la plupart, donc je
sais pas s'il y aura des admissions ou je pense
qu'il n'y aura pas grands admissions d'un partie ou
l'autre, mais c'est d'avancer la matière pour avoir
une conférence de règlement puis si vous pouvez vous
entendre, vous aurez un procès. C'est ça. Le but
de ça - de notre but - mon but, votre but, c'est
d'avoir un procès à un moment donné ou un règlement.
Règlement, ça serait toujours une très bonne chose
pour les deux parties, si possible, sinon, bon, vous
aurez un procès.

Donc, mon objectif, c'est de vous aider à avancer
soit à un règlement ou au procès. Ce sont seulement
mes seuls buts dans cette affaire.

M. RANCOURT: Je suis parfaitement d'accord, Monsieur
le Juge...

LE TRIBUNAL: Donc ça c'est le but de cette
conférence.

M. RANCOURT: ...oui, mais je suis d'accord sur le
but de la conférence.

LE TRIBUNAL: Oui.

M. RANCOURT: Et je suis d'accord sur ce qu'on veut
accomplir aujourd'hui.

LE TRIBUNAL: Oui.

M. RANCOURT: Et c'est que l'on veut accomplir...

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LE TRIBUNAL: Puis des dates pour les prochaines - peut-être je devrais entendre, soit de...

M. RANCOURT: Oui, je...

LE TRIBUNAL: ...commencer avec vous, les dates...

M. RANCOURT: ...je - je veux...

LE TRIBUNAL: ...un horaire.

M. RANCOURT: ...je veux proposer des dates - Me Dearden m'a interrompu mais j'étais à veille de donner des dates.

LE TRIBUNAL: Oui. Est-ce que vous avez par écrit une proposition...

M. RANCOURT: Oui. Alors, c'est...

LE TRIBUNAL: ...une suggestion de votre part...

M. RANCOURT: ...c'est....

LE TRIBUNAL: ...puis une suggestion de la part de Me Dearden?

M. RANCOURT: Monsieur le Juge, aujourd'hui la seule date qui nous importe d'établir, c'est la date pour la demande d'aller en appel par rapport à votre décision sur les refus de madame Gervais, devant la motion de la plaignante. C'est la seule date pour laquelle nous sommes ici aujourd'hui et j'ai informé monsieur Dearden que je viens obtenir un des deux transcripts (sic) et j'ai informé monsieur Dearden c'était par raison de maladie du Court Reporter - j'ai les documents qui démontrent ça ici, si la Cour a besoin de voir ça. Y'a eu - y'a une réassignation...

LE TRIBUNAL: Okay. Mais pour la...

M. RANCOURT: ...y'a des bonnes raisons pour ça.

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LE TRIBUNAL: ...pour retourner, c'est la transcription en date du 7 décembre et vous l'avez pas?

5 M. RANCOURT: Y'a - y'avait deux transcriptions et donc, c'était celle en octobre...

LE TRIBUNAL: Le 30 octobre?

10 M. RANCOURT: ...qui vient d'être obtenue et y'en avait une autre en - je me souviens pas de la date, mais c'était la - c'était pour les deux motions qui concernaient les découvertes. Y'a eu deux jours qui concernaient les découvertes et c'était ces deux transcriptions-là.

15 LE TRIBUNAL: Mais c'est - la date qui manque, c'est laquelle?

15 M. RANCOURT: La date qu'on cherche à établir aujourd'hui, c'est une - ah, vous voulez pour le...

LE TRIBUNAL: De la date de transcription.

M. RANCOURT: Okay. Alors donnez-moi...

LE TRIBUNAL: Vous l'avez la date du 30 octobre...

20 M. RANCOURT: ...une seconde. Je vais sortir la - la - la notice de motion et je vais vous dire les dates. La voici, okay. Donc il y avait dans la notice de motion que vous avez peut-être pas vue, je ne sais pas...

25 LE TRIBUNAL: Non.

M. RANCOURT: ...il y a à la page - y'a une section qui s'intitule:

30 "The following documentary evidence will be used at the hearing of the motion."

Le point 1, c'est:

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"The transcripts of November 26th hearing."

Et le point 2, c'est:

"The transcript of the October 30th Court hearing."

Et puis après ça, y'a d'autres points d'évidence qui sont nécessaires, mais ça, ce sont les deux transcriptions. Celle d'octobre, je peux confirmer que dans les quelques jours qu'on vient - qui viennent de passer, j'ai obtenu et je n'ai pas eu le temps de regarder ou de lire cette transcription du 30 octobre.

MR. DEARDEN: Sorry, you have that?

M. RANCOURT: Je l'ai maintenant, oui. Et donc, je suis prêt à établir une date aujourd'hui, même si je n'ai pas celle du 26 novembre, parce que je pense que....

LE TRIBUNAL: Le 26 de novembre, est-ce que c'est une motion ça, cette question?

M. RANCOURT: C'était les deux - oui, c'était des - parce qu'on parle d'un refus - des refus de madame Gervais dans des motions de découverte et c'est les deux jours de transcription pour la motion de découverte elle-même qui inclus la motion de madame Gervais, qui inclus les refus de madame Gervais et qui inclus les deux motions de découverte. Ça, ça s'est fait dans deux jours et c'était - et c'est....

LE TRIBUNAL: Je me souviens pas de ça. Est-ce que c'est....

M. RANCOURT: Oui, oui, oui. Toute à fait, Monsieur le Juge.

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LE TRIBUNAL: ...c'est bien...

M. RANCOURT: Je vais éclairer votre mémoire.
C'était le 26 novembre et le 30 octobre...

LE TRIBUNAL: Okay.

M. RANCOURT: ...on a eu comme ça deux jours. Un
premier jour le 30 octobre, c'était la motion
d'intervenir de madame Gervais.

LE TRIBUNAL: Okay.

M. RANCOURT: Suivi de la motion de la plaignante
pour les refus de madame Gervais.

LE TRIBUNAL: Okay.

M. RANCOURT: D'accord? Et la deuxième date, c'était
le 26 novembre. C'était, si ma....

LE TRIBUNAL: Madame Gervais, on a fait ça en même
temps, je pense. On a fait une demande
d'intervention...

M. RANCOURT: Oui.

LE TRIBUNAL: ...de la part de Me Amid (ph) je crois
était présent...

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: ...et puis cette matière était décidée
cette journée-là.

M. RANCOURT: Oui.

LE TRIBUNAL: Et puis là, on a continué.

M. RANCOURT: Oui, et ce qu'on a fait, la deuxième
chose qu'on a fait ce jour-là...

LE TRIBUNAL: Oui.

M. RANCOURT: ...c'était la motion de la plaignante
concernant les refus de madame Gervais.

LE TRIBUNAL: Oui, ça, ça été fait le 30 octobre, je
crois.

M. RANCOURT: Le 30 octobre, oui.

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LE TRIBUNAL: Je me souviens pas d'avoir fait quelque chose le 26 novembre.

MR. DEARDEN: Yes, so what's November 26th?

M. RANCOURT: Et le 26 novembre, c'était les deux - les deux motions de refus pour les découvertes.

LE TRIBUNAL: Mais ça c'était votre de motion (sic)...

M. RANCOURT: Et celle de la plaignante.

LE TRIBUNAL: ...et celle de la plaignante, mais ça n'avait rien à faire avec madame Gervais?

M. RANCOURT: Non, à mon sens, ça a affaire, parce que pendant cette session-là, de cette journée-là, j'ai fait des arguments comme quoi on ne pouvait pas poursuivre à cause de ce qui s'était passé le premier jour.

LE TRIBUNAL: Et vous voulez - vous avez demandé un ajournement pour....

M. RANCOURT: J'ai fait des arguments et j'ai demandé un ajournement et j'ai fait plein d'arguments...

LE TRIBUNAL: Oui.

M. RANCOURT: ...je me souviens pas du transcript (sic) en détail...

LE TRIBUNAL: Oui.

M. RANCOURT: ...mais je sais que je veux l'utiliser dans cette - dans cette motion pour demander d'aller en appel.

LE TRIBUNAL: De toute façon, bon, je ne sais pas si c'est pertinent, parce que pour moi, c'est relié....

M. RANCOURT: Mais ça c'est le contenu de la motion, Monsieur le Juge.

LE TRIBUNAL: Oui, mais c'est relié aux refus de la plaignante et votre motion de refus. C'était pas

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une affaire avec madame Gervais parce que ça, c'était tout décidé, ou pas décidé, mais c'était tout entendu le 30 octobre. Le fait que vous avez demandé un délai ou un ajournement un mois plus tard à cause que j'avais pas rendu une décision sur la question des refus de madame Gervais, bon, ça, ça peut-être pertinent à la décision des refus.

M. RANCOURT: Oui.

LE TRIBUNAL: Mais pas de - pas pertinent à la question des refus de madame Gervais...

M. RANCOURT: Monsieur le Juge...

LE TRIBUNAL: ...selon moi. Donc....

M. RANCOURT: ...en tout respect...

LE TRIBUNAL: Oui.

M. RANCOURT: ...vous êtes en train d'argumenter que ma notice de motion n'est pas correcte et qu'il y a des arguments que je veux faire qui ne sont pas pertinents.

LE TRIBUNAL: La question de délai là, ça c'est une question d'établir une date - bon, okay.

M. RANCOURT: Alors la date proposée...

LE TRIBUNAL: La transcription, excusez...

M. RANCOURT: Oui.

LE TRIBUNAL: ...la transcription pour la date du 26 novembre va être prête quelle date? Ça c'est pas - toutes cette - ça c'est toute la journée de cette - ça peut pas être requis pour être la question de la demande d'un ajournement. Ça, ça pris une demi-heure, je ne sais pas, au tout début. C'est une question de demander un ajournement...

M. RANCOURT: Monsieur le Juge...

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5 LE TRIBUNAL: ...pour votre motion et la motion de la plaignante, pour un refus, ça se peut que ça - mais ça, vous ne demandez pas une transcription de toute la journée ou si c'est ça, parce que ça, ça va prendre....

M. RANCOURT: Oui, je comprends votre - vos inquiétudes....

LE TRIBUNAL: Bon. Pour des inquiétudes...

10 M. RANCOURT: Et je suis prêt - je suis prêt à poursuivre sans la transcription du 26, même si je l'ai mis dans ma notice de motion.

LE TRIBUNAL: Parce que je ne vois pas le...

M. RANCOURT: Je suis prêt à le faire, Monsieur le Juge...

15 LE TRIBUNAL: Oui. Okay.

M. RANCOURT: ...pour accommoder la Cour...

LE TRIBUNAL: Allez de l'avant avec votre affaire.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay.

20 M. RANCOURT: Je suis prêt à le faire, Monsieur le Juge, par contre, Monsieur le Juge, vu que je viens de recevoir la première transcription qui est la plus pertinente...

LE TRIBUNAL: Oui.

25 M. RANCOURT: ...j'aimerais le temps de l'étudier, et cetera, avant de préparer mon factum...

LE TRIBUNAL: Okay.

30 M. RANCOURT: ...qui est nécessaire, et cetera, donc moi, je propose une date de la motion, de l'entente de la motion qui donnerait le temps pour les deux parties de préparer leur factum, de les étudier,

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etcetera, qui serait à la fin avril. Donc, je proposerais la semaine du 21 avril ou du 28 avril.

LE TRIBUNAL: Okay. Et puis, Me Dearden, is that....

MR. DEARDEN: No, I'm out of the country, Your Honour. The week of April 22nd and 29th and I'm - as I indicated, I want - I'm requesting that this motion be set down as soon as possible. I put on the record that the November 26th transcript is completely irrelevant to his leave motion.

THE COURT: I think he's agreed that he's prepared to proceed without that - I was indicating the same thing to him in the French language that in my view, although I agree with Mr. Rancourt, I do not wish to be involved in what evidence he raises or you raise at an appeal of my decision so...

MR. DEARDEN: Of course.

THE COURT: ...you think its relevance - you know, that's not for me to decide.

MR. DEARDEN: Of course.

THE COURT: It's just my thinking.

MR. DEARDEN: But, Your Honour....

THE COURT: I'm giving you my thinking on it.

MR. DEARDEN: Your Honour, we are February 25th, I would have thought that something at the end of March would have been what Mr. Rancourt was going to propose, but I would suggest April 1, 2 or 8, 10, or mid-April, but I guess....

REGISTRAR OF THE COURT:

MR. DEARDEN: It's Easter Monday, okay.

THE COURT: Easter Monday.

MR. DEARDEN: Well, let's not do it then.

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5 THE COURT: Well, there's one another issue here in
scheduling; I have - as I've indicated, there are
three more decisions, one of which will be a fairly
major decision - well, the Champerty motion is - so
should we - there is the potential of scheduling
this one for either party, the next one - I mean,
there's potentially - il y a un potentiel d'avoir
trois autres - or three other appeals. Should we
book them all on, say - potentially book them all on
10 - for whoever may wish to appeal - if you follow -
these are preliminary - ce sont des affaires
préliminaires. Ce sont des motions de refus,
finalement. Est-ce qu'on devrait fixer une date
d'appel, pour une demande d'appel, pour tout, parce
15 que je sais pas, y'a des date, hein? Y'a toutes
sortes de choses...

M. RANCOURT: C'est trop tôt, Monsieur le Juge.

LE TRIBUNAL: ...j'aimerais...

20 M. RANCOURT: Je - je - honnêtement, je - y'a des
bonnes chances que ces trois motions-là sont pas
tous les trois en appel et...

LE TRIBUNAL: J'ai une question d'appel à savoir, ça
se dérape un peu, si on se rappelle des questions de
banc, motion, donc - so there's the potential to
25 have multiple appeals. And that's fine. Everyone;
plaintiff, defendant has a right to appeal - j'ai
pas d'objection à ça. Ça, ce sont les règles. Ça
va de même, mais la...

M. RANCOURT: Juste pour clarifier...

30 LE TRIBUNAL: ...même si on fixerait deux jours, si
quelqu'un veut demander une demande d'appel, est-ce
qu'on devrait fixer un...

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M. RANCOURT: J'aimerais clarifier un point, Monsieur le Juge...

LE TRIBUNAL: Oui.

M. RANCOURT: ...que c'est peut-être qu'il vous échappe. Par rapport à la motion de Champerty...

LE TRIBUNAL: Oui.

M. RANCOURT: ...il est clair que c'est une décision - ce serait une décision finale...

LE TRIBUNAL: Oui.

M. RANCOURT: ...qui peut aller directement à la Cour d'appel. Donc, il n'y a pas de....

LE TRIBUNAL: C'est pas nécessaire d'avoir une date pour cette motion là.

M. RANCOURT: Exactement. Exactement. Donc, celle-là n'est pas nécessaire du tout. Donc, ça laisse juste deux motions par rapport à des questions de découverte...

LE TRIBUNAL: Question de refus.

M. RANCOURT: ...honnêtement, je - vous avez reçu des soumissions écrites et orales. Je ne sais pas du tout quelle va être la nature de vos décisions, mais en mon sens, j'ai confiance que ça va être juste pour les deux parties. Je ne veux pas présupposer qu'il va y avoir des appels sur ces motions-là.

LE TRIBUNAL: Non, je ne dis pas que - c'est pas que vous avez l'intention de - mais - ça m'a - ça m'a d'l'air de la possibilité.

M. RANCOURT: Il y a un autre point ici - je peux juste finir ma pensée.

LE TRIBUNAL: Okay.

M. RANCOURT: Il y a un autre point aussi, Monsieur le Juge, c'est que cette motion que l'on veut

céduler pour faire la demande d'appel, celle qu'on avait prévu de cédule aujourd'hui, n'a pas d'interférence avec les autres motions, c'est-à-dire qu'elle est indépendante...

LE TRIBUNAL: indépendante.

M. RANCOURT: ...dans une certaine mesure.

LE TRIBUNAL: Oui.

M. RANCOURT: Elle semble être indépendante, alors je - ça serait peut-être mieux de pas trop préjuger les choses. Je sais pas. Monsieur Dearden a proposé des dates qui seraient milieu d'avril, par exemple ou la semaine du 8 avril. La semaine du 15 avril qu'il a proposé, je suis disponible excepté le 19, le vendredi.

MR. DEARDEN: What about 18th?

M. RANCOURT: Le 18, je préfère pas parce que j'ai - je dois faire de la préparation. Donc, ce que je préférerais, ça serait le 15 ou le 16 d'avril.

MR. DEARDEN: No, I'm out of the country until the 16th, so I was proposing 18, 19, or 17.

M. RANCOURT: Vous avez dit, Monsieur Dearden, que vous étiez disponible milieu avril ou début avril. Vous avez parlé de première et deuxième semaine d'avril et milieu avril, vous avez dit. Vous avez dit que vous allez être absent la semaine du 22 avril et du 29 avril et vous n'avez pas - mais vous avez indiqué, il y a quelques instants, que vous étiez disponible la semaine du 15, du 8 et du 1^{er} avril.

MR. DEARDEN: No, I said - or I should have said April 1st and 2nd - but apparently April 1st is Easter Monday - 8, 10 - 8, 10th, 17, 18, 19.

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M. RANCOURT: Ah, okay. Alors je serais d'accord pour le 10 avril.

MR. DEARDEN: No, okay, my apologies. Sorry, I wrote that down here, but actually I'm leaving for Boston marathon April 10th, coming back April 16th. My apologies, Mr. Rancourt...

MR. RANCOURT: Alors ca nous...

MR. DEARDEN: ...I wrote that down wrong.

MR. RANCOURT: ...ca nous met....

MR. DEARDEN: How about 8th? How do you look on the 8th?

M. RANCOURT: Vous avez dit le 17. Je serais d'accord pour le 17, le 17 avril.

MR. DEARDEN: Okay.

THE COURT: Okay, that works. Ça ça va. So the date – we should – can we check with the trial coordinator? Who's – maybe if you check that. We don't really have a registrar here so...

REGISTRAR OF THE COURT: No, I don't....

THE COURT: ...we have just – so can you check that date; the 17th? It would need to be a bilingual judge.

REGISTRAR OF THE COURT: Not in front of Your Honour?

THE COURT: And not in front of me, no.

REGISTRAR OF THE COURT: Okay.

THE COURT: That's for sure. So if that would be....

MR. DEARDEN: And no more Justice Annis.

THE COURT: No more Justice Annis.

M. RANCOURT: Et pourquoi pas le Juge Annis?

LE TRIBUNAL: Y'a été...

MR. DEARDEN: He's Federal Court.

M. RANCOURT: Ah, je ne le savais pas.

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LE TRIBUNAL: ...oui, y'a été transféré au Fédéral.

M. RANCOURT: Ah.

LE TRIBUNAL: Y'a à peu près deux semaine.

M. RANCOURT: Est-ce que c'est une promotion?

LE TRIBUNAL: C'est pas mal égal. Je ne dirais pas une promotion, mais peut pour....

M. RANCOURT: Il vaudrait mieux signaler, le Juge Beaudoin aussi est exclu.

LE TRIBUNAL: Oui, oui. Oui, oui. Oui, oui.

GREFFIER DE LA COUR: Y'a pas de réponse, Monsieur le Juge.

THE COURT: So we take a - okay, let's deal with other matters. Tentatively that date, I don't know - the matter would take how long?

MR. DEARDEN: It shouldn't take longer than two hours.

THE COURT: Two hours?

MR. RANCOURT: Non.

MR. DEARDEN: No, really, it's just a refusals on a cross-examination and he's got to prove leave - he's got to meet the test for leave. It can't take longer than two hours.

M. RANCOURT: Les arguments sont détaillés. Je prévois une demi-journée.

THE COURT: Well, two hours is pretty well a half day in any event.

M. RANCOURT: Je prévois une demi-journée, une pleine demi-journée, avec possibilité d'être obligé de continuer un peu.

LE TRIBUNAL: Bon.

COURT SERVICES OFFICER: I could....

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THE COURT: Yes, would you go there and see if they have a bilingual judge?

M. RANCOURT: Je pense, Monsieur le Juge, que pour qu'il n'y est pas de surprise et pour qu'on soit sûr de faire en détail la chose, ça serait mieux de dire une journée et puis...

LE TRIBUNAL: Ah, non, non, non, non, non, non, non, non.

M. RANCOURT: ...puis d'éviter de...

LE TRIBUNAL: Non, non, non, non, non. Une demi-journée max, max, max, max, maximum.

MR. DEARDEN: It's refusals on cross-examination.

LE TRIBUNAL: Ça c'est....

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay. Est-ce qu'il y a d'autre....

MR. DEARDEN: Now, Your Honour, on the assumption that April 17th we can find a bilingual judge, can we set dates for when Mr. Rancourt serves me with his motion record and factum and then when my factum would be due, but I would like to have his factum at least ten days before April 17th.

M. RANCOURT: Je suggère, Monsieur le Juge, qu'on attende de confirmer la date avant de commencer à discuter des autres dates.

LE TRIBUNAL: Non, on devrait utiliser notre temps. Si - bon, ça peut...

M. RANCOURT: Okay. Alors...

LE TRIBUNAL: ...ça peut s'appliquer....

M. RANCOURT: ...au risque - au risque que ça soit à refaire....

LE TRIBUNAL: Oui, mais on peut le dire 10 jours avant, c'est 10 jours avant le 17. Si c'est une

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autre date, ça va être 10 jours avant la date qui suit.

M. RANCOURT: Donc ça nous amène au - en fait....

LE TRIBUNAL: Ça sera le 7 d'avril.

MR. DEARDEN: Which is a Sunday, so April 5th is a Friday.

THE COURT: April 5th.

M. RANCOURT: Et puis ensuite, je recevrais, moi, pour avoir le temps d'étudier le factum de la plaignante, je le recevrais quand, le 12, si je propose?

MR. DEARDEN: You're going to give me the 5th and I give you the 12th?

MR. RANCOURT: Oui.

MR. DEARDEN: Sure.

M. RANCOURT: Oui.

MR. DEARDEN: Sure.

M. RANCOURT: Okay. Alors....

LE TRIBUNAL: C'est pas mal tout ce qu'on a à faire avec - le 12, ça c'est 10 jours d'avance, puis le 12 c'est...

M. RANCOURT: En fait, Monsieur le Juge...

LE TRIBUNAL: ...cinq jours d'avance, hein.

M. RANCOURT: ...j'aimerais corriger quelque chose. Je me suis triché là, parce que dans les règles, j'ai droit à quatre jours sans compter les fins de semaine, alors j'aimerais mieux avoir les matériaux de mon collègue le 10, si c'était possible.

LE TRIBUNAL: Mais vous, vous êtes juste le 5, hein?

M. RANCOURT: Oui.

MR. DEARDEN: That hardly give me the...

MR. DEARDEN: ...10 days that I wanted to....

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LE TRIBUNAL: Ça donne sept jours. Ça donne - ou si vous voulez le faire plus tôt, vos documents plus tôt, donc...

5 M. RANCOURT: Est-ce que monsieur Dearden accepterait le 11? Parce que ça me donne un, deux, trois - trois jours seulement - attendez - le 11, un, deux, trois, quatre - oui le 11 ça serait dans les règles, ça serait quatre jours. Est-ce que monsieur Dearden accepterait le 11?

10 MR. DEARDEN: If he - and I want his earlier, Your Honour, and he's obviously got it done because he just held it up.

LE TRIBUNAL: Donc ça serait - donc ça serait - pour vous le 4.

15 M. RANCOURT: C'est quoi ça?

LE TRIBUNAL: Pour vous le 4 d'abord.

M. RANCOURT: D'accord. Alors, le 4 et le 11.

LE TRIBUNAL: Le 4 et le 11.

20 M. RANCOURT: Est-ce que monsieur Dearden a confirmé le 4 et le 11?

LE TRIBUNAL: Oui.

MR. DEARDEN: Yes.

LE TRIBUNAL: Oui.

M. RANCOURT: Okay. Merci.

25 MR. DEARDEN: Yes.

MR. RANCOURT: Okay, merci.

30 MR. DEARDEN: Your Honour, while we're waiting for word from the trial coordinator about the availability of a judge on April 17th, this whole case conference got started off with me writing you on December 31st and I made an extra copy of the letter to the Court. There's a couple of

housekeeping matters that I'd like directions on, if possible.

M. RANCOURT: Est-ce que vous avez une copie pour moi, Maître Dearden?

MR. DEARDEN: Well, I served you with it, but I don't have an extra copy, sorry. You can look off mine if you want.

M. RANCOURT: Non, j'en ai une mais elle pleine de mes notes, alors c'est ça.

MR. DEARDEN: It should have four tabs, Mr. Rancourt – and I alerted Mr. Rancourt to this last night; that December 31st letter would be dealt with today. So Your Honour, really at paragraph four, where I'm asking for a direction that Mr. Rancourt actually provide citations of the pages of a transcript and if there happens to be question and answers, the question and answer numbers so that we know what he's referring to, as opposed to guessing, because he – what he does is he says he's – in his notice of motion, like we just heard, I'm relying on, you know, the October 30th transcript, but doesn't tell us what part of it, and it could be a full day transcript and we don't know, when he comes to argue, what page he might specifically refer to because it won't be in his factum. So I'm seeking a direction that he simply cite the pages of the transcript that he would be relying on, in his factum. So in other words we don't come here and find out that page 1,000 is suddenly an issue and we're not prepared for it.

M. RANCOURT: Alors...

LE TRIBUNAL: Avec ça, dans votre factum, pas dans votre avis de motion.

5 M. RANCOURT: Oui, bien sûr, Monsieur le Juge, je suis d'accord avec ce que monsieur Dearden propose. C'est par manque de temps dans l'urgence de soumettre le factum à la date qui était prévue, que j'ai une fois, je crois, à ma mémoire, été obligé de faire ça, parce que je me souvenais qu'il y avait quelque chose dans le transcript (sic), mais je ne me souvenais exactement où. J'ai pas eu le temps de vérifier. Ça s'est passé une fois et si vous - je pense, donc, c'est pas nécessaire d'avoir une directive...

10 LE TRIBUNAL: Ça - ça s'applique...

15 M. RANCOURT: ...mais les deux, les deux parties devraient....

LE TRIBUNAL: ...ça s'applique aux deux parties.

20 M. RANCOURT: Oui. Oui, bien sûr. Alors, je vais toujours - je vais toujours dans la mesure du possible, mais...

LE TRIBUNAL: Okay. C'est bien. On a une date. On a un juge bilingue...

25 CLERK OF THE COURT: Justice Métivier - Madame la Juge Métivier.

M. RANCOURT: Métivier.

GREFFIÈRE DE LA COUR: Oui, Métivier

M. RANCOURT: Le 17?

GREFFIER DE LA COUR: Non.

M. RANCOURT: Non?

30 MR. DEARDEN: No.

THE COURT: Oh, you have a conflict, that's it.

REGISTRAR OF THE COURT: Conflict?

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THE COURT: Okay, see if there's another one. Alors
va voir si y'en a un autre. Ça c'est....

CONSTABLE DE LA COUR: Je reviens.

LE TRIBUNAL: Okay. That's correct.

M. RANCOURT: Quel est le conflit, Monsieur Dearden,
s'il vous plait?

MR. DEARDEN: I know her.

M. RANCOURT: Vous êtes amis? Est-ce que c'est
conditionnel....

MR. DEARDEN: I am not...

M. RANCOURT: ...est-ce que c'est personnel?

MR. DEARDEN: I am not answering anything more on the
subject, Your Honour.

THE COURT: Due to personal relationship - he is
saying that the judge has a conflict. I accept....

M. RANCOURT: Est-ce que la Cour est au courant de ce
conflit?

LE TRIBUNAL: Non, pas vraiment ou peut-être....

MR. DEARDEN: Actually...

LE TRIBUNAL: Actuellement....

MR. DEARDEN: ...you are, Your Honour, do you
remember....

THE COURT: The trip you took in - you took a trip...

MR. DEARDEN: Yes.

THE COURT: ...with - and she was on the same trip.

MR. DEARDEN: And then I corrected the record to
indicate that our respective spouses were coming
with us.

THE COURT: Yes.

MR. DEARDEN: The way I put it at the time...

THE COURT: Yes, you did that in September...

MR. DEARDEN: ...so you are aware.

THE COURT: ...or early - yes, that's right.

M. RANCOURT: Okay. Je me souvenais pas. Je crois que j'étais là ce jour-là. Je me souvenais pas du nom....

LE TRIBUNAL: Qu'est-ce - je crois que c'était sur les records.

M. RANCOURT: Oui, oui. D'accord.

LE TRIBUNAL: Vous êtes aussi connaissant que moi.

M. RANCOURT: Oui et les deux on a oublié.

LE TRIBUNAL: C'est vrai. C'est vrai.

M. RANCOURT: Merci. Alors, Monsieur le Juge....

LE TRIBUNAL: Donc, mais cette directive pour les questions des transcriptions, si y'a une référence aux transcriptions pour une partie ou l'autre, que ce soit indiqué dans le factum les pages...

M. RANCOURT: Oui.

LE TRIBUNAL: ...et les questions qui sont - qui sont pertinentes ou sont....

M. RANCOURT: Juste une note finale sur cette question-là. Dans la notice - dans la lettre de monsieur Dearden, au point quatre, il dit:

« Defendant Rancourt is in the habit of... »

LE TRIBUNAL: Non, bien oublie ça. Oublie ça.

M. RANCOURT: Oui, d'accord. Je vais - je suis heureux de l'oublier, Monsieur le Juge.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: Parce que je n'apprécie pas du tout ça.

MR. DEARDEN: The other point in paragraph four, Your Honour, on the second page, is that the motion record has to contain all the evidence that Mr. Rancourt relies on. That is, he has to include it in the motion record for the particular matter, as

5
opposed to saying, "I'm going to rely on some other
motion record in a different proceeding that's
already been decided and then come to the Court and
decide, you know, well, I'm actually going to rely
on a piece of evidence that I had in that motion
record because I listed it in my notice of motion.",
and that's not proper, you can't do it that way.
Whatever evidence he wants to rely on should be
in...

10
THE COURT: In the motion.

MR. DEARDEN: ...that motion record.

THE COURT: Okay.

M. RANCOURT: Attention, Monsieur le Juge.

LE TRIBUNAL: Oui.

15
M. RANCOURT: Permettez-moi de faire ma soumission
avant de décider trop rapidement.

LE TRIBUNAL: Oui.

20
M. RANCOURT: Les règles - je crois que les règles
sont claires, que dans le cas d'une demande d'appel,
d'une demande de permission d'aller en appel, on
peut demander à la Cour que le - la motion sur
laquelle on fait demande à l'appel soit mis devant
la Cour. On n'a pas besoin de l'inclure dans notre
motion record. Je crois que les règles sont très
25
claires à cet effet-là et c'est exactement dans ce
sens-là que j'ai utilisé cette règle-là. J'ai dit,
et dans mon notice de motion et dans la confirmation
de motion, je demande que ces documents soient
présents et je les ai emmenés avec moi et tout le
monde savait, et la Cour aussi les avait préparés.
30
Donc, ce que monsieur Dearden me demande de faire,

parce que c'est une - des motions qui sont assez énormes, me coûteraient très chers....

LE TRIBUNAL: Non, non, mais y'a juste une motion. C'est ça le point. Le point, c'est que si vous faites une demande d'appel d'une décision dans une motion...

M. RANCOURT: Oui.

LE TRIBUNAL: ...bon, vous devriez mettre dans cette motion d'appel, tous les documents que vous vous fiez dessus: la décision, ma décision si c'est moi ou - mais là, il devrait pas avoir - parce que dans ce cas-ci, il y a plusieurs motions, plusieurs documents, il faut que tous les matériaux que vous vous fiez dessus, soient inclus dans votre «motion record».

M. RANCOURT: Oui et non, Monsieur le Juge.

LE TRIBUNAL: L'exception, c'est la motion elle-même.

M. RANCOURT: Sur laquelle je fais appel, n'est-ce pas?

LE TRIBUNAL: ...oui, mais je pense que...

M. RANCOURT: Bon, alors...

LE TRIBUNAL: ...pour inclure la motion....

M. RANCOURT: ...ça dépend si elle est très grosse.

LE TRIBUNAL: Bien la motion - la motion, c'est un avis de motion.

M. RANCOURT: Non, y'a les factums, y'a tous les documents qui venaient avec la motion originale sur laquelle on fait appel. Y'a pas de raison de recopier et de relier tous ces documents-là dans la notice de motion pour faire demande à l'appel. C'est prévu dans les règles que ce n'est pas nécessaire et ça serait me demander des ressources

5 qui ne sont pas nécessaires à utiliser. La Cour a déjà ces documents. La plaignante a ces documents et peut les emmener; ce sont des livres. J'ai les documents, je peux les emmener. Je fais la demande dans les règles que ces documents soient présents le jour même et on n'a pas de problème et y'a pas de raison que le - que je sois obligé de re-préparer un énorme dossier avec l'ancien factum, l'ancien - les anciens affidavits, tous les documents - y'a pas de raison de ça. Ça existe déjà et les règles prévoient ça, et je m'excuse, je n'ai pas emmené mon livre de règles avec moi, mais les règles sont très claires là-dessus quand on fait une demande.

10 THE COURT: So he's saying that he doesn't have to put the motions and factums from the initial motion.

15 MR. RANCOURT: Exactement.

MR. DEARDEN: Your Honour, just so that we can move on, Mr. Rancourt, you think that's what the rule means...

20 MR. RANCOURT: Oui.

MR. DEARDEN: ...that's your problem. Okay, but for the purposes of today....

THE COURT: There has to be an appeal book - there should be an appeal book that has everything in it.

25 MR. DEARDEN: Absolutely.

THE COURT: That's my....

MR. DEARDEN: Absolutely.

30 LE TRIBUNAL: Ça c'est ma - la pratique à la Cour d'appel. C'est sûr c'est ça - Cour Divisionnaire, ça c'est sûr c'est ça. Donc, ça c'est un appel à la Cour Divisionnaire.

M. RANCOURT: Monsieur le Juge....

THE COURT: That's my understanding - ça c'est mon....

M. RANCOURT: Il faut lire la règle parce qu'on n'est pas à la Cour d'Appel. On fait une demande d'appel....

MR. DEARDEN: Your Honour, there's - actually to expedite things, there's no need to go to the rule. My direction that I'll ask now is that on a stand-alone new motion, Mr. Rancourt knows that he has to include all of the evidence in that new motion. As far as his interpretation of what he can do on a...

THE COURT: It should be all in the....

MR. DEARDEN: ...leave to appeal, he does that at his own peril and I'm telling him that I'm going to object if he does rely on something that isn't in a motion record. But that's - I don't need you to give a direction on that, Your Honour - on leave to appeal...

THE COURT: he'll take his risks on it.

MR. DEARDEN: ...he takes his risk...

THE COURT: You should....

MR. DEARDEN: ...on how he's interpreting.

LE TRIBUNAL: Il faut poursuivre les règles.

M. RANCOURT: Oui et j'ai suivi les règles, Monsieur le Juge.

LE TRIBUNAL: Il faut suivre les règles, puis c'est toujours à regarder les 61, 62....

M. RANCOURT: Oui et je vais suivre les règles du mieux que je peux, Monsieur le Juge...

LE TRIBUNAL: Puis d'habitude...

M. RANCOURT: ...comme j'ai fait à la - au comité.

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5 LE TRIBUNAL: ...d'habitude, quand on met - dans le dossier d'appel, on met tous les documents, un factum à part, mais un «appeal record», ça contient les motions, «the decision» - tous les documents, la preuve - je sais pas si les factums sont inclus?

M. RANCOURT: Monsieur le Juge...

LE TRIBUNAL: Je crois que non.

10 M. RANCOURT: ...monsieur Dearden a retiré sa demande que vous fassiez une directive...

LE TRIBUNAL: Oui. Oui, so...

M. RANCOURT: ...mais si vous insistez, je peux...

LE TRIBUNAL: Non, j'insiste pas.

15 M. RANCOURT: ...emprunter votre livre et trouver la règle en question - si vous insistez.

LE TRIBUNAL: Oui, mais si vous êtes d'accord, je - mais c'est la pratique d'habitude, que le juge...

M. RANCOURT: Oui, mais...

20 LE TRIBUNAL: ...qui va vous entendre, votre appel, demande d'appel, ça assiste le Tribunal aussi, parce que dans ce cas-ci, il y a des documents partout.

25 M. RANCOURT: C'est pour cette raison que je vais faire une demande très claire dans les règles, que les documents précis qui sont nécessaires, c'est-à-dire la motion sur laquelle on fait appel, soit devant le juge.

LE TRIBUNAL: Oui, c'est sûr, la motion...

M. RANCOURT: Bien sûr.

30 LE TRIBUNAL: ...la motion, ça devrait être inclus. C'est ça qui va dans l'«appeal motion».

M. RANCOURT: Et je vais faire la demande très claire à la Cour, Monsieur le Juge.

MR. DEARDEN: But for today, Your Honour....

THE COURT: No direction on it, but you should follow the - I'm not telling you anything, you have - il faut suivre les règles.

M. RANCOURT: Je m'engage à suivre la règle comme j'ai fait dans le passé, Monsieur le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Y'a un malentendu par rapport à quelle est la règle. On n'a pas besoin de régler parce que monsieur Dearden vient de retirer sa demande de faire une directive.

MR. DEARDEN: I'm speaking of leave motions, but...

MR. RANCOURT: Oui.

MR. DEARDEN: ...I would like the case...

MR. RANCOURT: Oui.

MR. DEARDEN: ...conference endorsement, Your Honour, to give a direction that for stand-alone motions that may be filed, all the evidence has to be in the motion record. It can't - he can't just simply refer to some other motion in a new motion. So we're not talking leave motions, we're just talking if he files another motion, that motion record has to have all the evidence in it.

M. RANCOURT: Je pense que monsieur Dearden....

MR. DEARDEN: Sub - not leave motions.

M. RANCOURT: ...vient d'admettre que su un leave motion il n'y a pas cette exigence-là et c'est ce que je dis.

MR. DEARDEN: No, no, I'm disagreeing with you, I'm saying I don't need a direction on that.

MR. RANCOURT: Okay.

MR. DEARDEN: You take that at your own peril.

M. RANCOURT: Monsieur le Juge, je suis d'accord de suivre les règles. Y'a pas besoin de directive.

LE TRIBUNAL: Non, parce que....

5 M. RANCOURT: Et - par contre, si vous voulez faire des directives, y'a des comportements procéduraux que monsieur Dearden fait systématiquement contre - qui ne sont pas corrects, et moi aussi je vais demander des directives si - si vous - si on commence à faire ce genre d'administration-là, parce que monsieur Dearden a l'habitude - et c'est une habitude - d'amener ce qu'il appelle un «compendium of argument» et de présenter les documents que je ne - qui n'ont pas été mis de la motion, à la dernière minute, le jour même et de les mettre devant le Juge et de dire: «Regardez ceci; regardez cela».

10 LE TRIBUNAL: Non, il faut que ce soit inclus dans sa motion.

M. RANCOURT: Exactement.

15 LE TRIBUNAL: Il faut que ce soit. And I think....

M. RANCOURT: Et si on va demander des directives...

20 LE TRIBUNAL: Oui.

M. RANCOURT: ...moi, je vais demander que monsieur Dearden arrête ce comportement-là. Mais je pense qu'il a compris. Je me suis déjà plein de ça au juge, à maintes reprises, devant le Juge Annis, par exemple, je pense que c'est compris, mais si on veut faire des directives, je pense que je vais aussi demander des directives.

25 LE TRIBUNAL: Non, mais moi je peux pas faire des directives pour le comportement d'un appel qui

30

serait devant un autre juge, sauf de suivre les règles.

M. RANCOURT: Merci.

MR. DEARDEN: And I'm also disagreeing that I've used anything in the compendium that wasn't in the record, but that's not what we're dealing with right now.

THE COURT: Right, it's not really dealing with....

MR. DEARDEN: So the...

THE COURT: Okay.

MR. DEARDEN: ...third or the fifth paragraph, Your Honour, I think we've already had dealt with.

THE COURT: That's been dealt with.

MR. DEARDEN: That's been dealt with.

THE COURT: Ça c'est....

MR. DEARDEN: No date can be set down so from now on motions simply just say, "On a date to be fixed by case management Justice Smith."

M. RANCOURT: Un petit point par rapport à ça, juste pour aider la Cour, ce paragraphe cinq, monsieur Dearden suggère qu'on dise: on a date to be scheduled by case management Judge Smith. Et je demanderais à la Cour d'informer le registraire que c'est comme ça que nous allons faire les choses.

LE TRIBUNAL: Oui. Oui.

M. RANCOURT: Parce que moi, je...

LE TRIBUNAL: Je crois que...

M. RANCOURT: ...moi je présente devant le registraire...

LE TRIBUNAL: Oui.

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M. RANCOURT: ...et on ne me laisse pas, sans avoir une date, mettre une motion. Donc, je voudrais que le registraire soit au courant...

LE TRIBUNAL: Okay.

M. RANCOURT: ...que ça va être notre...

LE TRIBUNAL: Oui et puis le registraire

THE COURT: So I'll do these orally. Somebody going to draft up an order from today?

MR. DEARDEN: Sure.

THE COURT: So - il y'aura - there will be an order that the - all further motions are subject to - will not be filed unless dealt with by the case management judge, myself, on - and also that the registrar is advised to permit any party to file a notice of appeal or notice of leave to appeal on a date to be set by the case management judge, myself, in this matter.

M. RANCOURT: Merci, Monsieur le Juge.

LE TRIBUNAL: Okay?

MR. DEARDEN: Or any motion.

THE COURT: Or any motion, yes, or any motion. Yes?

REGISTRAR OF THE COURT: ...Justice Kane....

THE COURT: Okay, that's fine.

REGISTRAR OF THE COURT: ...set a date.

M. RANCOURT: Pardon?

LE TRIBUNAL: Le Juge Kane, le 17.

GREFFIER DE LA COUR: Le 17 pour une demi-journée.

M. RANCOURT: K-A-N-E, c'est ça?

LE TRIBUNAL: Oui. Et puis -

MR. DEARDEN: Yes, thank you.

THE COURT: So this - in terms of the transcripts, pages to be indicated in terms of the - and we have

our dates for the materials and the leave to appeal motions. Anything else here?

MR. DEARDEN: The last....

THE COURT: Number six....

MR. DEARDEN: The last matter, Your Honour, we don't need to deal with seven, we can deal with paragraph six though - and I don't think that's a problem any longer because Mr. Rancourt is serving bound and tabbed materials, but we were getting paper-clipped materials and it's trite to say that what the Court gets in its file, the parties should be getting identical - that is, bound and tabbed. I take it that's not an issue anymore, Mr. Rancourt?

M. RANCOURT: Je comprends mal pourquoi monsieur Dearden fait toutes ces simagrées-là par rapport à ces choses-là. J'ai toujours fait de mon mieux. Y'a quelques fois où j'étais à la dernière minute et je n'ai pas pu relier convenablement les documents, mais j'ai toujours fait de mon mieux et dès que monsieur Dearden s'est plaint pour la première fois, ce de problème, tel qu'il le voyait, il n'y a pas eu de problème.

LE TRIBUNAL: Pas de problème. Donc moi, je fais pas aucune directive sur ce point.

M. RANCOURT: Merci.

LE TRIBUNAL: Okay. Est-ce qu'il y a d'autres matières, d'autres dates?

MR. DEARDEN: No, Your Honour.

THE COURT: Settlement conferences? Not at that stage yet?

M. RANCOURT: Non. Non, Monsieur le Juge.

LE TRIBUNAL: Non?

MR. DEARDEN: Or do you want, Your Honour, to set a date...

THE COURT: Because, you know....

MR. DEARDEN: ...for another case conference, but you know, well after...

THE COURT: The date of the....

MR. DEARDEN: ...your decisions that are coming down? Like....

THE COURT: Okay. We can do that. Do you want to....

M. RANCOURT: Je pense que ça serait mieux de le faire par courriel, parce que comme ça, on est plus informé de ce qui s'est passé entre temps.

LE TRIBUNAL: Okay.

THE COURT: Parties - I will - if it's a short one we can do it at nine o'clock someday that's convenient. It's a half day. Are we - souvent c'est plus long que prévu. Ça c'est mon expérience. Si c'est pour être plus qu'une heure, bon bien là, il faut que tu tiennes une date à 10h00 ou quelque chose....

M. RANCOURT: Monsieur le Juge, est-ce que je peux demander une dernière chose?

LE TRIBUNAL: Oui.

M. RANCOURT: Est-ce que monsieur Dearden pourrait me montrer un draft de l'ordre d'aujourd'hui qu'il a émettre (sic) avant de vous l'envoyer?

LE TRIBUNAL: Oui.

MR. DEARDEN: Yeah.

M. RANCOURT: Merci.

LE TRIBUNAL: Ça peut se faire par courriel ou par - or you can do it by....

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St. Lewis v. Rancourt

MR. DEARDEN: Yes.

THE COURT: You can do it by....

MR. DEARDEN: We will run...

THE COURT: I suppose you....

MR. DEARDEN: ...a draft by...

THE COURT: Yes.

MR. DEARDEN: ...Mr. Rancourt first and....

THE COURT: Don't want a huge formality about this,
but I think we need a record other than my sort of
notes that are - okay?

M. RANCOURT: Merci.

MR. DEARDEN : Thank you, Your Honour.

M A T T E R A D J O U R N E D

FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Linda A. Lebeau, certify that this document is a true and accurate transcript of the recording of St. Lewis v. Rancourt in the Superior Court of Justice, held at 161 Elgin Street, Ottawa, Ontario taken from Recording No. 0411-56-20130225 which has been certified in Form 1.

JUN 28 2013

Date

Linda A. Lebeau

Linda A. Lebeau

Court File no. CV-11-51657
SUPERIOR COURT OF JUSTICE

5 B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

10 - and -

DENIS RANCOURT

Defendant

15 P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE KANE
on April 17, 2013, at OTTAWA, Ontario

20

25

30 APPEARANCES:

Dearden, Mr.

Counsel for the Plaintiff

Rancourt, Mr.

Self Represented

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SUPERIOR COURT OF JUSTICE

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Transcript Ordered:

Transcript Completed: July 3, 2013

Ordering Party Notified: July 4, 2013

1.
Joanne St. Lewis v. Denis Rancourt

WEDNESDAY, APRIL 17, 2013

DANIEL RENAUD: INTERPRETER AFFIRMED - French/English

ODETTE BORRIS: INTERPRETER AFFIRMED - French/English

MR. DEARDEN: Good morning, Your Honour.

MR. RANCOURT: Bonjour, monsieur le juge.

MR. DEARDEN: A couple of administrative things, Your Honour. Permission that Professor St. Lewis sit beside me at the counsel table. And secondly, permission to use my Echo Smartpen.

THE COURT: Better check that out.

MR. RANCOURT: Yes.

THE COURT: That's fine. And while you're on your feet, counsel, so among the material that I was given, it includes a respondent's motion record,

“(defendant's motion for leave to appeal Justice Smith's decision dated March 6th)”

MR. DEARDEN: Yes.

THE COURT: Okay. And as I understand it, from the material that's been filed in my office, that has been settled between the parties?

MR. DEARDEN: No. If I could, Your Honour...

THE COURT: Um-hmm.

MR. DEARDEN: ...and you don't mind, you have two motions for leave that Mr. Rancourt has filed. The first one is a decision of December the 7th, which

will constitute all of the other documents in front of you, on a refusals motion within a refusals motion requiring deponent of an affidavit Ms.

Gervais to answer questions on cross. The second motion for leave to appeal he filed with respect to the March 6th decision - there were two March 6th decisions, both within the examinations for discovery. He brought a motion on exam - my examination for discovery of him. That's the one that's settled, I dropped those questions that....

THE COURT: Sorry, repeat that. Which one is settled?

MR. DEARDEN: The one - my examination of Mr. Rancourt - my examination for discovery of Mr. Rancourt. The March 6th decision that ordered Mr. Rancourt to answer a whole bunch of questions, he appealed two issues - I'll say two issues - two discrete issues. I dropped those and that motion is gone. That was the offer that was accepted, it's over, so there's no need to appeal on....

THE COURT: So the examination of the defendant which resulted in an appeal by your client, right?

MR. DEARDEN: Of a bunch of refusals on discovery.

THE COURT: Has been settled.

MR. DEARDEN: What he - he only put in play a couple of questions, that's been settled - I dropped them - I dropped those questions.

THE COURT: Okay.

MR. DEARDEN: Okay? That's off the table.

THE COURT: All right.

MR. DEARDEN: Now, the March 6th decision - the other March 6th decision of Justice Smith in the

5 examination for discovery of Professor St. Lewis,
Mr. Rancourt put in play one issue – one issue and
he claims – and that is he wants to re-examination
Professor St. Lewis about testimony he calls false
sworn testimony that she gave in discovery about the
date she met Ms. Gervais who's the subject of your
cross – the cross-examination motion, and he
complains in that leave to appeal motion that
Justice Smith never dealt with it in his March 6th
10 decision and my....

MR. RANCOURT: Monsieur le juge....

MR. DEARDEN: Please – please sit down, Sir.

THE COURT: Monsieur Rancourt, s'il vous plait.

MR. DEARDEN: So there's a good reason for that, Your
Honour. Justice Smith never dealt with that
15 decision so when we finish the main leave motion
that's before you; the December 7th one, I want to
take you through the responding record that you just
showed. I'll take you through the history and in my
submission, you will agree, because Justice Smith
20 has already ruled in an endorsement he made on March
27th, that he carved out that issue – he hasn't
decided that issue and of course he can't decide
that issue because I haven't completed my cross-
examination of Ms. Gervais.
25

THE COURT: All right.

MR. DEARDEN: Okay? So that – so my motion, Your
Honour, which I don't think is going to take – that
motion isn't going to take me longer than 15 minutes
to walk you through that document – sorry.
30

THE COURT: No, not your fault.

MR. DEARDEN: Is really a costs motion. It's to dismiss that motion because it's appealing something that's never been decided and I put him on motion that I'm going to seek full indemnity costs for making us go through this. That's - and I'm going to take 15 minutes to take you through that, unless you want me to do it now.

THE COURT: No. I raised a preliminary point and we're going to get to the bottom of it. And so at one point in time, in any event, there were three motions, as between the two parties...

MR. DEARDEN: Yes.

THE COURT: ...there were three motions.

MR. DEARDEN: Well, there's been eight leave motions that he's filed, but....

THE COURT: Well, I think there's - actually there's been about 20 motions since this action began, but....

MR. DEARDEN: 27.

THE COURT: ...now it's 27 and it's unfortunate the parties can't get this thing onto trial, but in any event, my point simply is this, I have - so I'm given a whole bunch of documentation and it includes a motion,

"A defendant's notice of motion for leave to appeal...

So this is the defendant's notice of motion,

...of Judge Smith's decision dated March the 6th, 2013."

All right. So just bear with me. And according to you that is the motion that's been settled?

MR. DEARDEN: What does it read after,

"March 6th, 2013"

Your Honour? If it reads,

"Rancourt's refusals motion."

THE COURT:

"St. Lewis' refusals motion."

MR. DEARDEN: Yes, that's been settled.

THE COURT: That's been settled.

MR. DEARDEN: Or....

THE COURT: All right.

MR. DEARDEN: Or, wait a second - yes. Yes, yes - yes, that's what the....

THE COURT: And....

MR. DEARDEN: As opposed to,

"St. Lewis' examination."

THE COURT: Then I have another, I think, version thereof - they're both dated March the 15th.

"Defendant's notice of motion for leave to appeal (Justice Smith's decision dated March the 6th, 2013. Rancourt's refusal motion)."

It's the same words, but....

MR. DEARDEN: That's in play.

THE COURT: One - sorry, that's in play?

MR. DEARDEN: Yes. Because that's Mr. Rancourt's refusals motion to compel Professor St. Lewis to answer questions on her examination for discovery. That's in play, and if you turn....

THE COURT: So those - is,

"Rancourt's...."

Oh, okay, they're different.

MR. RANCOURT: Monsieur le Juge, si je peux me permettre - pour clarifier la confusion - deux décisions ont été émis le même jour pour deux motions de refus en découverte - et on été - et je suis allé en appel le même - j'ai soumis mes documents d'appel le même jour pour ces deux décisions-là, c'est pour ça que ça porte à confusion.

MR. DEARDEN: So if you wrote, Your Honour, on that page, "Rancourt's refusals motion regarding the examination for discovery of Professor St. Lewis.", that will keep you from tripping up on what's in play.

THE COURT: No, but what I'm trying to do is get rid of stuff that is not relevant to what we're doing today so correct me if I'm wrong - Mr. Registrar, would you show this to counsel and Mr. Rancourt? As I understand it, the motion reflected in the document I'm not giving to you has been settled, it's not before the Court.

MR. DEARDEN: You're correct.

THE COURT: Right.

ME RANCOURT: Oui, c'est absolument ça.

LE TRIBUNAL: Merci.

ME RANCOURT: Monsieur le juge, si je peux me permettre une....

LE TRIBUNAL: Non, non, non, non.

ME RANCOURT: Sur cette question de clarification.

LE TRIBUNAL: Non, non. Non.

ME RANCOURT: D'accord.

THE COURT:

"Motion settled and withdrawn."

All right. Mr. Registrar, let's get rid of that one. Now, that goes in the Court file and I don't want to see it anymore. And then,

"...will make a motion...will make a motion...to be heard on a date scheduled in order the leave be granted...the decision of Justice...dated March the 6th."

All right. So Mr. Dearden, I understood that your client was appealing - sorry, is seeking leave to appeal a decision of Justice Smith dated March the 6th, 2013?

MR. DEARDEN: No.

THE COURT: No.

MR. DEARDEN: No.

THE COURT: All right. It's the defendant that's seeking that?

MR. DEARDEN: Yes.

THE COURT: All right.

MR. DEARDEN: On one issue, Your Honour.

THE COURT: All right.

MR. DEARDEN: One issue.

THE COURT: So on that issue - sorry, on that - and that is still in play?

MR. DEARDEN: That's in play today.

THE COURT: Well....

MR. DEARDEN: It's the second motion that's supposed to be dealt with today.

THE COURT: It is the second motion. So what I've got on that motion from the defendant, in terms of materials....

MR. DEARDEN: Is just that that you're holding.

THE COURT: It's only that?

MR. DEARDEN: Yes.

THE COURT: There's no factum, there's no book of authorities, there's nothing.

MR. DEARDEN: No, and he was ordered on March 27th to file by April the 4th and I filed only the responding motion record that you held up when you first started, Your Honour. There was no need for a factum because I'm going to make a submission to you....

THE COURT: No need of a factum by whom?

MR. DEARDEN: By Professor St. Lewis because there's no law to argue; it's purely factual and that is Justice Smith never...

THE COURT: No, no.

MR. DEARDEN: ...decided this issue.

THE COURT: No, no, no, no. But before I get to you - before I get to your part - to your client - j'ai une question de façon préliminaire pour moi c'est la suivante: en quel sens est-ce que vous avez - quelle raison est-ce que vous croyez que vis-à-vis la

décision datée le 7 décembre, que vous allez venir ici avec les autorités, avec un factum, avec tout, mais vis-à-vis la deuxième motion, vous allez préparer un document d'à peu près 12 pages, puis vous croyez que moi je vais accepter ça?

M. RANCOURT: Non, Monsieur le Juge. Pour clarifier la situation....

LE TRIBUNAL: Mais quelle sorte de clarification est nécessaire, Monsieur Rancourt?

M. RANCOURT: Celle que je tente de vous donner.

LE TRIBUNAL: Vous êtes conscient - vous êtes conscient des règles de cette - de cette Cour vis-à-vis quels documents sont nécessaire vis-à-vis les motions, puis vous avez obtenu les dates pour présenter vos soumissions vis-à-vis les motions. Puis sur une motion, vous allez arriver avec une pile de documents comme ça, puis sur l'autre, c'est à peu près comme j'ai dit, 15-20, 20-25 pages.

M. RANCOURT: Ça, se sont les faits superficiels, Monsieur le Juge. J'aimerais expliquer la situation, si vous me permettez? Ça ce sont les faits qu'on peut voir devant nous avec les piles de documents, mais j'aimerais expliquer le comment et le pourquoi de ça, si vous me donnez quelques minutes.

LE TRIBUNAL: Ce n'est pas nécessaire de prendre quelques minutes. J'ai tous les documents nécessaires pour une motion.

M. RANCOURT: Oui.

LE TRIBUNAL: Je n'ai pas les documents nécessaires pour la deuxième motion.

M. RANCOURT: Mais, Monsieur le Juge...

LE TRIBUNAL: Pourquoi Monsieur Rancourt?

M. RANCOURT: ...c'est très simple. J'ai - j'ai - je vous ai soumis une «confirmation of motion» dans lequel j'explique que je demande que cette seconde motion dans laquelle il n'y a pas de document, soit rapportée à plus tard et je donne dans cette confirmation de motion qui est un livre comme ça, les raisons, d'après les règles, que je demande que ce soit remis à plus tard. Et je donne des raisons très détaillées et dans ces raisons-là, j'explique pourquoi je n'ai pas pu soumettre les documents pour cette deuxième motion, à cause de la chronologie, à cause des exigences dans le temps.

Est-ce que vous avez ce document qui est la confirmation des motions, Monsieur le Juge...

LE TRIBUNAL: Je n'ai aucune idée...

M. RANCOURT: ...parce que j'en ai une copie ici pour vous?

LE TRIBUNAL: ...j'ai aucune idée de quels documents vous êtes en train de parler maintenant pour la raison suivante: non, non, non, non, non. Quand moi je parle, c'est comme dans un cours à l'université, quand le professeur parle, les étudiants ne peuvent pas parler. Ça, ce sont les règles de jeu.

M. RANCOURT: J'accepte ces règles-là.

LE TRIBUNAL: D'accord. C'est parce que vous avez - vous avez un livre dans vos mains. Moi, je n'ai pas ce livre.

M. RANCOURT: Mais je l'ai soumis à la Cour en règle, Monsieur le Juge. Si vous ne l'avez pas, y'a une erreur au registraire, mais j'ai amené aussi une

deuxième copie et j'ai la preuve que je l'ai soumis en règle. Je l'ai emmené avec moi la preuve. J'ai le tampon de la Cour.

LE TRIBUNAL: Moi, j'ai été - moi j'étais dans mon bureau hier soir, vers 10h30...

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: ...puis après que j'ai pris le temps pour lire la première motion, celui daté...

M. RANCOURT: Oui.

LE TRIBUNAL: ...le 7 décembre...

M. RANCOURT: Oui.

LE TRIBUNAL: ...puis maintenant j'arrive, c'est quoi ça là ici là, une petite «notice of motion for leave to appeal» - c'est quoi ça là?

M. RANCOURT: Bien, Monsieur le Juge, avec tout respect, la motion - le document «confirmation of motion» explique exactement la situation. À l'origine, il y avait trois motions qui avaient été soumises; une a été réglé; une deuxième, j'ai - y'a toute une historique dans ce - dans ce document qui explique...

LE TRIBUNAL: Oui.

M. RANCOURT: ...que ce n'était pas possible de rendre les documents à temps, pour des raisons qui sont très claires et expliquées ici, et ce document, je l'ai donné à la Cour, en règle. J'ai la preuve du tampon et tout - je l'ai emmené avec moi - et j'en ai une copie supplémentaire pour vous si vous voulez l'avoir aujourd'hui.

LE TRIBUNAL: Est-ce que vous êtes en train de dire, Monsieur Rancourt, le suivante (sic) - est-ce que

vous êtes en train de dire que les documents dans le livre devant vous...

M. RANCOURT: Oui.

LE TRIBUNAL: ...représentent tous les documents nécessaires pour votre motion vis-à-vis l'audition (sic) datée le 6 - le 6 mars?

M. RANCOURT: Absolument pas. Je ne dis pas ça.

LE TRIBUNAL: Okay.

M. RANCOURT: Je dis le contraire. Je dis que ce document est en règle, parce que dans la règle ça dit que la confirmation de motion, vous donnez les raisons pourquoi vous voulez ajourner. Ce document donne les raisons avec document à l'appui, de ces raisons.

LE TRIBUNAL: Oui.

M. RANCOURT: Ce document me permet de vous expliquer comment cette anomalie que vous voyez devant vous a eu lieu. C'est ça ce document. Et comme je vous dis, j'en ai apporté un autre avec moi si vous voulez le regarder. Voilà, c'est ça ce document.

LE TRIBUNAL: Pourquoi est-ce que vous êtes prêt pour une de vos - une de vos deux motions mais pas pour la deuxième?

M. RANCOURT: Parce que j'ai eu le temps de préparer une motion qui date de plus longtemps et avec les échéanciers qui ont été réglés avec le....

LE TRIBUNAL: Monsieur - Monsieur Rancourt, ça fait - ça fait un mois et demi.

M. RANCOURT: Justement, Monsieur le Juge. Si vous regardez la chronologie, si vous regardez les dates...

LE TRIBUNAL: Monsieur c'est très simple...

M. RANCOURT: ...si vous....

LE TRIBUNAL: ...c'est très simple. Est-ce que cette motion vis-à-vis - est-ce que votre motion...

M. RANCOURT: Oui.

LE TRIBUNAL: ...vis à vis l'ordonnance datée le 6 mars, est-ce que c'était cédulé pour aujourd'hui?

M. RANCOURT: Oui et non. Je vais expliquer le oui et non, Monsieur le Juge. Regardez l'ordonnance du Juge Smith à l'onglet - je l'ai mis à l'onglet (g) de ce document, si je peux vous le faire passer, l'ordonnance du Juge Smith, les mots précis ou je peux vous les lire simplement?

LE TRIBUNAL: Est-ce que - est-ce que Juge Smith a cédulé aujourd'hui pour la motion du 6 mars?

M. RANCOURT: Juge Smith a dit, au paragraphe 6 de son «endorsement»:

"However, this case management endorsement is subject to the discretion of the judge hearing the motions for leave on April 17th, being satisfied that the matter may be heard on April 17th and if not, to adjourn them to an agreeable date."

MR. DEARDEN: Yes, but read the previous paragraph, Mr. Rancourt.

M. RANCOURT: Et le paragraphe avant disait...

MR. DEARDEN: He's not giving you the full picture, Your Honour.

M. RANCOURT: Non, je donne la conclusion, mais le paragraphe disait, effectivement que, il dit - le paragraphe 5 dit:

"Rancourt's two additional motions for leave to appeal shall be heard immediately following the motion for leave to appeal set for April 17th."

Qui avait déjà été réglé la première,

"The parties shall file their materials by the same dates."

Donc il y avait des dates précises où il fallait donner les matériaux,

"As set out for the motion for leave to appeal to be heard on the 17th."

Donc...

LE TRIBUNAL: Est-ce que je peux - est-ce que je peux voir cette ordonnance, s'il vous plait?

M. RANCOURT: Oui. C'est l'onglet (g) de ce document que j'ai déjà donné à la Cour.

LE TRIBUNAL: Ah oui, c'est celui-là qui a l'affidavit là? Excuse-moi, Monsieur Rancourt.

«Case Management endorsement», Justice Smith, 27 mars. The case management endorsement, Justice....

"...letter dated, should Rancourt's two motions for leave to appeal be heard after his motion for leave to be heard on April 17th. Rancourt...submits that a full day should be set aside to hear the two motions for leave to appeal. In addition, Mr. Rancourt submits he does not have time to prepare because he has deadlines to make costs submissions. Mr. Lewis is - Ms. St. Lewis' estimate time...likely more accurate. Also...for leave to appeal may be premature and as such...this will be decided by leave application judge in any event. I find that having the two motions for leave to appeal

heard on the same date is another of Mr. Rancourt's motions for leave to...."

Sorry,

"On the same date as another of Mr. Rancourt's motion for leave to appeal would be the most efficient and least expensive manner for the parties to have the issue of leave to appeal resolved in a just manner."

So he's suggesting they should both be heard today.

"St. Lewis requests that the two motions for leave to appeal be heard on April 17th following motion for leave to appeal."

What?

"Be heard on April...."

MR. DEARDEN: That's the December 7th decision, Your Honour. That's the Gervais refusals so....

THE COURT: Oh, the two motions, okay.

MR. DEARDEN: Yes.

THE COURT: One of which is now gone.

MR. DEARDEN: Yes.

THE COURT: Okay.

"For leave to appeal be heard on April 17th following the motion for leave to appeal that is already set to be heard on that date. Estimate of time for this motion by St. Lewis is 30 minutes."

That's her estimate of Mr. Rancourt's motion. All right.

5 "Rancourt's two additional motions for leave to appeal shall be heard immediately following the motion for leave to appeal set on April 17th, 2013. Parties shall file the materials by the same dates as set out in the motion for leave to appeal to be heard on April 17th."

That's the December 7th.

10 "However this case management endorsement is subject to the discretion of the judge hearing the motions for leave on April 17th, being satisfied the matter may be heard on April 17th and if not, to adjourn them to an agreeable date. To allow Mr. Rancourt time to prepare for his two additional motions for leave to appeal, I'll extend the deadlines for him to respond to costs submissions."

15 So that's another matter. Alors, il y a une ordonnance ici qui indique que vous êtes - non, non, non, non. Monsieur Rancourt, moi je parle. C'est un élément préliminaire. Écoute, l'addition de Juge Smith est claire. Vous avez eu l'obligation de préparer les documents. Les documents ne sont pas prêts. Excusez-moi. Le Juge Smith a indiqué que j'ai une discrétion, mais cette discrétion n'adresse pas l'obligation que vous avez eu de préparer les documents. Alors vous êtes ici aujourd'hui, puis vous n'êtes pas prêt à présenter votre motion.

25 M. RANCOURT: C'est vrai, je ne suis pas prêt.

LE TRIBUNAL: Oui.

30 M. RANCOURT: Et aussi, je peux vous dire, si vous regardez l'onglet (f), j'ai dû faire un appel à la Cour d'Appel de l'Ontario - le document est là à l'onglet (f) et c'était un travail monstre et j'ai

argumenté - j'ai dit ça au Juge Smith - il ne l'a pas mentionné dans son «endorsement», mais ça été servi le 12 avril et la date...

THE COURT:

"...from the order, reasons of Justice Smith dated March 13th."

M. RANCOURT: C'est une décision finale qui va à la Cour d'Appel et qui peut mettre fin à l'action.

LE TRIBUNAL: Ça c'est une autre décision?

M. RANCOURT: C'est une décision dans cette action-ci, parce qu'il y avait une motion - je vais vous expliquer, Monsieur le Juge, c'est pas compliqué. Y'avait une motion pour éliminer l'action qui était une motion de maintenance et de champerti; cette motion a été entendue; elle est terminée et j'avais droit d'appel à la Cour d'Appel directement parce que c'est une décision finale. J'avais 30 jours pour le faire. J'ai jamais fait ça. Je suis auto-représenté...

LE TRIBUNAL: Ça c'est - bien ça c'est pas - okay, continuez.

M. RANCOURT: ...et donc, j'ai fait ça et j'ai pu le servir et le soumettre à la Cour le 12 avril. Mon deadline pour les documents que vous avez devant vous était le 4 avril, Monsieur le Juge.

LE TRIBUNAL: Oui, okay. Je pense ça, ça suffit pour le moment, parce que je ne veux pas perdre plus de temps. Nous avons une demi-journée puis on va commencer avec la motion vis-à-vis la décision datée

le 7 décembre, mais je pense que la décision de la Juge Smith, l'endossement, c'était très clair: préparez vos documents. Vos documents ne sont pas prêts pour la deuxième motion, mais je vas (sic) - on va considérer ça après la première motion.

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay?

MR. DEARDEN: Your Honour, if I could just put on the record - because this defendant will use transcripts in ways that we could never imagine - he was ordered by Justice Smith to file his materials by April 4th and he has flaunted that order. He has just ignored it. I've gone on the record in the motion record that we have pertaining to this March 6th decision....

THE COURT: Mr. Dearden, there's been no-compliance with the order, the issue is whether or not the motion should be dismissed.

MR. DEARDEN: Yes.

THE COURT: That's what the issue is there. We'll deal with it after the December 7th motion.

MR. DEARDEN: Thank you, Your Honour.

THE COURT: Before we do that - before we start that, I've got one more book I want to share with counsel. Give this book to Mr. Dearden and Mr. Dearden it, on the covering page, does not refer to which decision that book is filed in relation to.

MR. RANCOURT: C'est....

MR. DEARDEN: December the - it's the December 7th - it's my responding record to the December 7th decision of Justice Smith.

LE TRIBUNAL: Est-ce que vous êtes d'accord que ça c'est une partie de la motion vis-à-vis l'addition?

M. RANCOURT: Non. Moi, je vois ce document-là comme une motion pour enlever l'action, «dismiss».

LE TRIBUNAL: Ce n'est pas une motion. C'est...

M. RANCOURT: Bien je vois - c'est entièrement un argument...

MR. DEARDEN: No, no.

M. RANCOURT: C'est entièrement un argument...

MR. DEARDEN: It says....

M. RANCOURT: Ce livre est entièrement un argument pour que la motion soit déterminée par...

LE TRIBUNAL: Monsieur, regardez le livre...

M. RANCOURT: ...un enlèvement.

LE TRIBUNAL: ...Monsieur Rancourt...

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: ...regardez encore le livre.

M. RANCOURT: Oui, j'ai regardé le contenu...

LE TRIBUNAL: Regardez les onglets. Dans les onglets, il y a les photocopies des documents. Ce n'est pas un argument. Ce sont les documents.

M. RANCOURT: Ah oui. Je voulais dire que c'est, d'après les documents, il me semble que ça va être un argument que monsieur Dearden a déjà annoncé qu'il va faire.

LE TRIBUNAL: Possiblement. Possiblement.

M. RANCOURT: Il a annoncé qu'il allait faire cet argument.

LE TRIBUNAL: Okay.

MR. DEARDEN: No, Your Honour...

THE COURT: It's December 7th.

MR. DEARDEN: It's the - yes, and you'll see it says,

"Refusals during the cross-examination of a deponent of an affidavit."

And that is Ms. Gervais.

THE COURT: That's fine.

MR. DEARDEN: So December 7th.

LE TRIBUNAL: Okay. Alors, Monsieur Rancourt, il est 11h00. On va arrêter à 11h30 pour une petite pause de 15 minutes là, à 11h30, midi moins quart. Vous avez une heure et demie pour présenter vos soumissions, une heure et demie.

M. RANCOURT: Jusqu'à?

LE TRIBUNAL: Quand on - commencement 1h00.

M. RANCOURT: Oui, donc à - merci. Je vais faire de mon mieux, Monsieur le Juge.

SOUMISSIONS PAR M. RANCOURT:

Alors, je vais commencer par vous signaler les documents qui sont devant vous: il y a mon factum qui est un petit livre de ce type-là pour la décision du 7 décembre, n'est-ce pas?

LE TRIBUNAL: Oui, je l'ai.

M. RANCOURT: Okay. Il y a ensuite deux livres des dossiers de motion en deux tomes. Vous les voyez? Il y a deux tomes et il y a les onglets jusqu'à l'onglet 15. Ça ce sont les dossiers de motion en deux tomes.

LE TRIBUNAL: Oui, je l'ai.

M. RANCOURT: Vous l'avez?

LE TRIBUNAL: Oui. Oui.

M. RANCOURT: Vous l'avez?

LE TRIBUNAL: Oui.

M. RANCOURT: Ils sont ici.

LE TRIBUNAL: Oui.

M. RANCOURT: Et ensuite, il y a le livre des
autorités qui est un seul tome plutôt imposant...

LE TRIBUNAL: Oui.

M. RANCOURT: ...et qui va jusqu'à l'onglet 28.

LE TRIBUNAL: Je l'ai.

M. RANCOURT: Et ensuite, Monsieur le Juge, il y a
des documents de l'autre partie, et ils sont faciles
à repérer parce que je crois qu'ils sont tous en
vert.

LE TRIBUNAL: Oui.

M. RANCOURT: Donc il y a un factum, un dossier de
motion et deux livres d'autorité du Parti opposant.

LE TRIBUNAL: En tout 34 livres, oui.

M. RANCOURT: Merci. Oui? Okay. Et aussi, Monsieur
le Juge, je m'excuse, des fois je vais changer de
lunettes là. Donc, le - en gros, le plan que je
vais suivre pour le temps que vous m'avez donné,
Monsieur le Juge, c'est le suivant: je vais parler
de - je vais répondre à la question: «Quel est cet
affidavit de Mireille Gervais?» Je vais prendre 30
secondes pour le regarder avec vous. Ensuite:
«Quelle est la raison d'être de cet affidavit de
Mireille Gervais? Pourquoi il a été soumis? Je
vais prendre deux minutes pour expliquer ça.

Ensuite, quel est le conflit factuel exactement
auquel vient amener cet affidavit? Donc le conflit
factuel de base de la bataille. Quelques minutes
pour ça. Ensuite, je vais parler de comment
Monsieur Dearden répond à cette - à ce conflit

factuel et ensuite, je vais regarder avec vous le jugement contesté pour établir quelle a été la décision suite à ces demandes. Et ensuite, je vais parler des autorités et du droit qui s'appliquent dans les circonstances de cette motion. Et finalement, je vais dire quelques mots sur pourquoi c'est important d'aller en appel avec cette motion. Ça c'est le plan pour le temps que vous m'avez donné, Monsieur le Juge.

Alors, l'affidavit de Mireille Gervais, si on pouvait le regarder ensemble, il est à l'onglet 4.3 de mon dossier de motion, le tome 1 de mon dossier. LE TRIBUNAL: Oui.

M. RANCOURT: Oui? Alors, si vous regardez cet affidavit de Mireille Gervais, premièrement je veux vous signaler, au paragraphe 2, que Mireille Gervais est la directrice du Centre d'appel pour les étudiants à l'Université d'Ottawa et qu'elle est associée à ce Centre depuis 2005.

Et ensuite, je veux vous signaler que les parties factuelles de son affidavit, qui sont les derniers paragraphes, alors elle dit - elle contredit des faits et des témoignages de la plaignante, dans son affidavit. Et le fait le plus important, est l'idée que la plaignante aurait rencontré la directrice du Centre avant d'écrire le rapport de la plaignante sur - qui critique le rapport de la plaignante. Et ce fait est contesté dans l'affidavit et il y a aussi une preuve documentaire que ce n'est pas possible, cette rencontre-là. C'est l'exhibit A je

crois - oui, A de l'affidavit de madame Gervais. Alors si on pouvait juste le regarder rapidement cette exhibit-là, Monsieur le Juge?

LE TRIBUNAL: Oui.

M. RANCOURT: Il est intitulé - c'est donc un courriel dont la ligne sujet est: introducing myself - SAC report. C'est envoyé de Johanne St-Lewis à Mireille Gervais - ça c'est son adresse de courriel au travail - et la première - ça dit: «Hello Mireille» et la première ligne ensuite, le paragraphe:

"I have been remiss in not introducing myself before this."

Et cetera et elle continu. Donc, ça c'est une - un appui documentaire au fait que la plaignante n'a - et la date - la date de ce courriel est très importante, évidemment, j'ai oublié de la dire. C'est le 23 septembre 2009 et le point saillant, c'est à savoir si c'est vrai que la plaignante a rencontré Mireille Gervais à propos de son SAC report, en 2008, en novembre 2008 alors que ce courriel a été envoyé en septembre 2009 et que madame Gervais jure qu'elle n'a jamais rencontré le Professeur St-Lewis par rapport à son rapport jusqu'à temps après ce courriel où elles ont accepté de se rencontrer.

Donc, il y a un conflit dans les faits qui est très important et pendant que je suis sur la question des faits, je vais vous dire l'importance de ce fait. L'importance est la suivante, Monsieur le Juge: dans - c'est un cas de diffamation et dans la critique que j'ai fait, j'ai critiqué le professionnalisme, etcetera de la plaignante et entre-autre, elle a écrit un rapport critique d'un autre rapport. C'est très important à savoir si elle parlé avec l'auteur du premier rapport, parce que ça c'est la norme quand on écrit un rapport critique. Et donc, elle dit et dans son....

LE TRIBUNAL: Elle?

M. RANCOURT: Elle, c'est la plaignante - dit....

LE TRIBUNAL: Gervais?

M. RANCOURT: Non, la plaignante.

LE TRIBUNAL: St-Lewis.

M. RANCOURT: Bien sûr. Donc, St-Lewis affirme dans son «Statement of claim» et dans son «reply», dans les «pleadings», qu'elle a rencontré Gervais avant d'écrire ce rapport. Elle affirme ça et en fait, on pourrait aller directement voir tout ce qu'elle affirme, parce que ça, ce sont les faits centraux, alors j'aimerais sauter dans ma présentation et aller directement là, si vous me permettez? Donnez-moi une seconde là, j'essaye d'être le plus efficace possible, alors je vais de l'avant. Oui. Alors, regardez l'onglet 9 de mon dossier de motion, Monsieur le Juge, si possible - ça, ça va être dans le tome 2 maintenant, l'onglet 9 du tome 2 de mon dossier de motion et puis vous voyez que c'est un factum dans une des motions, au préalable, à une

5 motion importante, mais je veux l'utiliser pour vous signaler les faits saillants, parce que j'ai fait une revue des faits saillants ici. Alors, je vais aller à la page 7 de ce factum ou la page 412 du dossier de motion, si vous préférez, qui est en haut de la page, le gros chiffre «412».

LE TRIBUNAL: Oui.

10 M. RANCOURT: Et là, je vais passer en revue les faits saillants, Monsieur le Juge. Les voici: je commence au paragraphe 14 et vous regardez, c'est dans la section (d), «contested material facts - prejudicial to defendant». C'est la raison que j'ai mis de l'avant - l'affidavit de Mireille Gervais est expliqué dans ce factum, est expliqué de la façon suivante donc:

20 "In her statement of claim, the plaintiff stated in part in the course of conducting the evaluation of the student appeal centre report, Professor St. Lewis met with representatives of the student appeal centre and requested records and date necessary."

25 Ça c'est le paragraphe 25 du «Statement of claim». Ensuite, au paragraphe 15, elle dit dans son «reply» daté du 5 août 2011:

"The plaintiff provided the SAC...

30 C'est à dire «the Student appeal Centre»,

...advanced notice of - advanced notice of the analytical problems in the SAC report and requested that data be provided to her that supported the SAC report."

Ça c'était dans le «reply». Donc elle - elle affirme dans ses «pleadings» qu'elle a fait son devoir d'aller voir - de rencontrer les auteurs du premier rapport et de leur donner «advance notice» et cetera.

LE TRIBUNAL: Mais c'est pas ça. Ça dit:

"The plaintiff provided SAC - provided the SAC advance notice."

M. RANCOURT: Oui.

LE TRIBUNAL: Mais SAC, j'imagine, c'est plus qu'une personne?

M. RANCOURT: Bien, elle est la directrice de SAC et donc, ce n'est pas contesté que l'on parle de Mireille Gervais.

LE TRIBUNAL: Okay.

M. RANCOURT: D'accord?

LE TRIBUNAL: Okay.

M. RANCOURT: Ensuite, au paragraphe 16...

LE TRIBUNAL: Oui.

M. RANCOURT: ...à la prochaine de ce factum...

LE TRIBUNAL: Oui.

M. RANCOURT: ...dans l'examen au préalable que j'ai fait de la plaignante le 1^{er} mai, elle a témoigné entre autre:

"I know that that is tied because I remember distinctly the pre-conditions I set because when

I had met with Mireille Gervais in November 2008, one of the distinct pieces in that meeting with her was her concern about confidentiality and I recollect that...."

Donc elle dit qu'elle a rencontré en novembre 2008, sous serment, dans les examens au préalable.

Ensuite, dans le même examen au préalable du 1^{er} mai, y'a eu une autre échange qui est au paragraphe 17 de mon factum qui est le suivant - elle vient de répondre à une question. Elle dit:

"No, let's clarify that. No, they did not provide me with data, but I met with Mireille Gervais on the 14th...

Elle dit,

...she just didn't want to cooperate - to be cooperative."

Et donc, je pose une autre question,

"The 14th of what, please?"

Elle dit,

"Of November 2008. She didn't want to be cooperative so in that meeting, other than raising the issue around confidentiality of data and that she was not going to provide me with data, I only had the benefit of the data that was in the public report which she had been provided."

5 Et cetera. Donc vous voyez qu'à deux reprises sous serment, la plaignante a été très claire, elle n'a pas dit: «Oh, peut-être, je me souviens, j'suis pas certaine» - elle a été très claire, la date précise même, qu'elle a rencontré madame Gervais.

10 Ensuite, quel est le rapport avec l'affidavit de madame Gervais et là j'en parle au paragraphe 18, je dis:

15 "The plaintiff's pleading statement and sworn testimony about a meeting she had with SAC staff in November 2008 before she finalized her evaluation report of the SAC report is in contradiction to affidavit evidence of Mireille Gervais."

20 Et au paragraphe 10 de son affidavit elle dit très clairement,

25 "I have never had any communication by any means, in person or otherwise, with Joanne St. Lewis about the 2008 SAC appeal centre report and/or her 2008 evaluation of the student appeal center report until Joanne St. Lewis e-mailed me on September 23rd, 2009...

30 Un an plus tard,

...at 9:24 p.m."

Et ensuite, elle dit - l'exhibit A, c'est-à-dire qu'on vient de regarder ensemble dit - qui est daté de 2009,

"I have been remiss in not introducing myself...."

Et évidemment cet - cet - cet exhibit est intitulé:

"Introducing myself, SAC report."

Ça c'est la ligne sujet de cet exhibit. Donc, vous voyez qu'il y a des faits qui sont en conflit, très sérieusement et les données que j'utilise dans ma défense de «fair comment» sont basées sur le fait que madame St-Lewis n'a pas mentionné dans les documents que j'utilise qu'elle avait rencontré - mais - par contre, dans toute cette évidence-là, elle dit avoir rencontré Mireille Gervais. Donc c'est pour....

LE TRIBUNAL: Non, non. Attend. Attend, attend-là. Vous allez trop vite là.

M. RANCOURT: Ah excusez-moi.

LE TRIBUNAL: Vous allez trop vite pour moi.

M. RANCOURT: Oui.

LE TRIBUNAL: Alors jusqu'au paragraphe 19....

M. RANCOURT: Jusqu'au paragraphe 19...

LE TRIBUNAL: Oui.

M. RANCOURT: ...oui.

LE TRIBUNAL: Page 414.

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Vous avez - vous êtes en train de dire que - écoutez, c'est très clair qu'il y a un conflit dans...

M. RANCOURT: Les deux....

LE TRIBUNAL: ...dans la - non, non, non, non.

M. RANCOURT: Excusez-moi.

LE TRIBUNAL: Il y a un conflit entre l'opposition de madame St-Lewis. Y'a un conflit entre les - entre la preuve qu'elle a présenté. Vous avez commencé au paragraphe - au paragraphe 14...

M. RANCOURT: Oui.

LE TRIBUNAL: ...puis vous avez indiqué les portions de l'interrogatoire et cetera, quand elle a dit «bien j'ai travaillé avec elle en 2008 - 2008, et cetera», puis on arrive au paragraphe numéro 19, à cause de la pièce A, et puis vous êtes en train de dire: «Écoute, y'a un conflit dans la présentation de madame St-Lewis» - c'est ça?

M. RANCOURT: Oui, je suis en train de dire qu'il y a un conflit dans les évidences qui est d'une part, madame St-Lewis dit avoir rencontré Mireille Gervais avant de finaliser son rapport en 2008...

LE TRIBUNAL: Oui.

M. RANCOURT: ...et d'autre part, Mireille Gervais dit ne pas l'avoir rencontré à propos de ce rapport avant 2009.

LE TRIBUNAL: Il y a un conflit...

M. RANCOURT: Oui, il y a un conflit dans les évidences.

LE TRIBUNAL: ...non, non, non. Il y a un conflit entre les deux dames, vis-à-vis le point que vous...

M. RANCOURT: Oui.

LE TRIBUNAL: ...que vous avez articulé.

M. RANCOURT: Oui.

LE TRIBUNAL: Mais moi, il me semble, est-ce que vous avez - est-ce que vous êtes d'accord ou non, qu'il y a possiblement un conflit entre le paragraphe 19...

M. RANCOURT: Attendez une seconde, s'il vous plait.

LE TRIBUNAL: ...la preuve de madame - madame St-Lewis et,

"I have been remiss in not introducing myself."

Ça c'est au moi de septembre 2009.

M. RANCOURT: Oui.

LE TRIBUNAL: Mais apparemment, avec - quand on regarde les autres paragraphes avant, madame St-Lewis a dit que «j'ai travaillé avec madame Gervais, avant septembre 2009, alors ce n'était pas nécessaire au - ce n'était pas nécessaire de dire, le 23 septembre 2009,

"I have been remiss in not introducing myself."

Une introduction, ce n'est pas nécessaire. Nous avons - nous avons déjà eu la communication ensemble.

M. RANCOURT: Il y a une erreur dans ce que vous avez dit, je pense Monsieur le Juge, qui est la suivante: ce n'est pas madame St-Lewis - c'est dans l'affidavit de Mireille Gervais qu'elle dit avoir pris un cours avec madame St-Lewis, mais madame St-Lewis n'avait pas, dans les évidences que j'ai dits...

LE TRIBUNAL: Okay.

M. RANCOURT: ...puisqu'elle a dit qu'elle connaissait.....

LE TRIBUNAL: Okay.

M. RANCOURT: Okay, donc, y'a un conflit réel et...

LE TRIBUNAL: Le conflit, c'est le conflit entre -
entre - entre madame St-Lewis puis madame Gervais.

M. RANCOURT: Entre leur - les évidences que les deux
mettre de l'avant, c'est ça.

LE TRIBUNAL: D'accord. Okay.

M. RANCOURT: Et puis - mais ce conflit, voyez-vous
Monsieur le Juge, l'importance de ce conflit dans
l'action est le suivant - l'importance dans l'action
dans l'action c'est le suivant: c'est que j'ai
découvert, après l'examen au préalable, les
évidences de madame Gervais, et donc, je les ai
emmenés dans ma motion de refus pour les examens au
préalable...

LE TRIBUNAL: Oui.

M. RANCOURT: ...de sorte à examiner le témoin, avoir
une ré-examination (sic) pour poser des questions
sur justement ce meeting qu'elle prétend, dans
certain document, avoir eu, qu'elle - parce que
quand elle disait qu'elle avait rencontré, elle
n'était pas en train de répondre à mes questions,
elle l'offrait gratuitement et c'est uniquement
après que j'ai appris ces données-là et c'est pour
ça que j'ai emmené cet affidavit dans ma motion de
refus.

LE TRIBUNAL: De madame Gervais.

M. RANCOURT: L'affidavit de madame Gervais, je l'ai
emmené dans ma motion de refus pour les examens au
préalable...

LE TRIBUNAL: Oui.

M. RANCOURT: ...pour argumenter d'avoir le droit
d'aller au fond de l'affaire en examen au préalable.

LE TRIBUNAL: Ça c'est la raison...

M. RANCOURT: Oui.

LE TRIBUNAL: ...pourquoi vous avez présenté la motion.

M. RANCOURT: Oui, exactement.

LE TRIBUNAL: Euh, l'affidavit, oui.

M. RANCOURT: Exactement.

LE TRIBUNAL: Okay.

M. RANCOURT: Mais je voulais que vous connaissiez cette raison-là, surtout que monsieur Dearden prétend que j'ai toute une autre raison que vous allez entendre tantôt.

LE TRIBUNAL: Mais pour vous...

M. RANCOURT: Oui?

LE TRIBUNAL: ...ce conflit entre ces deux dames-là...

M. RANCOURT: Oui.

LE TRIBUNAL: ...vis-à-vis ce point, c'est important dans le procès pour quelle raison?

M. RANCOURT: Alors ce que j'ai essayé de dire, juste il y a un instant, c'est que....

LE TRIBUNAL: Je ne crois pas que c'est nécessaire de répéter ça.

M. RANCOURT: Okay. Ah, vous voulez dire - donc c'est important donc à deux différents endroits: un endroit, c'est mon désir de réexaminer la plaignante pour clarifier la question justement, pour pouvoir poser des questions ciblées sur est-ce qu'il y a eu rencontre? Dans quelle circonstance? Pourquoi que vous avez dit que y'avait eu une rencontre si c'est - si c'est peut-être pas vrai? Vous avez l'air à l'affirmer avec toute certitude. Qu'est-ce qui se passe, et cetera - je veux examiner en examen au

préalable, la plaignante sur cette question. Ça c'est une raison que ce conflit est important parce qu'il est dans un affidavit, dans une motion de refus.

LE TRIBUNAL: Okay.

M. RANCOURT: Okay? L'autre raison que le conflit est important, c'est parce que ça touche intimement la question de diffamation. Est-ce que j'avais - est-ce que c'était un «fair comment» de faire la critique que j'ai fait, qui critiquait entre autre le professionnalisme ou manque de professionnalisme de la plaignante, la façon qu'elle aurait fait son rapport, si ce rapport a été fait de façon indépendante ou pas, ce qu'elle prétend dans son rapport, que le rapport a été indépendant. Donc tout ça fait partie de mes critiques qui sont dans l'action de diffamation. Okay? C'est pour ça que c'est important, dans l'action précise.

Okay. Donc je n'ai pas suivi mon plan original, ce qui est toujours le cas, donc j'ai besoin de quelques secondes pour me réorienter ici là. Donc on a regardé l'affidavit. Oui, donc, puisqu'on est à l'onglet 9, je crois - est-ce qu'on est toujours à l'onglet 9?

LE TRIBUNAL: Oui.

M. RANCOURT: Oui. On va rester là quelques instants et je vais signaler d'autres choses. Vous voyez à l'onglet 9, ça c'est le factum dans la - dans «ma» motion pour les refus pour l'examen au préalable. Donc c'est là où j'ai introduit l'affidavit de Mireille Gervais. Donc c'est un document important,

ce factum et dans ce factum, si vous allez à la page 409 du dossier de motion, au paragraphe 9, je dis:

"A contested material fact - a contested material fact advanced by the plaintiff in her statement of claim, in the reply, and in the examination for causes undue prejudice to the defendant."

Ça c'était la raison là que je venais de découvrir ça, donc je voulais un autre examen. Ensuite, dans la partie 2 à la page 410, y'a - y'est question des «issues» dans le «refusals motion» - n'est-ce pas? Et là, trois des «issues» touchent directement cet affidavit de Mireille Gervais. Le «issue» (b):

"Whether the newly contested facts create unfair prejudice against the defendant."

LE TRIBUNAL: Excusez-moi, Monsieur Rancourt...

M. RANCOURT: Oui.

LE TRIBUNAL: ...où est-ce que vous êtes?

M. RANCOURT: Ah. Je suis à l'onglet 9...

LE TRIBUNAL: Oui.

M. RANCOURT: ...dans le factum de la motion de refus...

LE TRIBUNAL: Quelle page?

M. RANCOURT: ...à la page 410, qui est le gros chiffre en haut de la page là, le....

LE TRIBUNAL: Oui.

M. RANCOURT: D'accord? Et là - là, c'est la section «issues» pour cette motion - n'est-ce pas? Et

j'suis en train de vous dire, Monsieur le Juge,
que...

LE TRIBUNAL: «Issues», oui.

M. RANCOURT: ...j'suis en train de vous dire que
trois des six «issues» touchent directement
l'affidavit de Mireille Gervais. L' «issue» (b):

“Whether the newly contested facts create unfair
prejudice against the defendant.”

Newly contested facts c'est les données amenées par
Mireille Gervais, dans son affidavit. Donc, «issue»
(b) touche l'affidavit; «issue» (c):

“Whether the plaintiff's productions were
adequate given several failures to produce
relevant documents.”

Et bien, qu'est-ce que ça a à faire avec
l'affidavit, et bien, l'exhibit dans l'affidavit est
un courriel de madame St-Lewis qui aurait dû être
produit, qui est clairement pertinent et qui aurait
dû être produit, qui n'a pas été produit. Donc, non
seulement je découvrais cette contestation, mais je
découvrais aussi un document qui aurait dû être
produit, qui n'a pas été produit. Aucun document
d'échange entre Mireille Gervais et la plaignante
ont été produit, et ils sont clairement pertinents,
parce que ça touche à cette question de fond, dont
l'action de diffamation.

Donc, ça c'est le «issue» (c) qui vient chercher l'affidavit de Mireille Gervais. Vous me suivez, Monsieur le Juge?

LE TRIBUNAL: Mais quels sont les «newly contested facts»? Ça c'est le contenu?

M. RANCOURT: Ça - ça - ça c'est le fait que Mireille Gervais dit ne jamais avoir rencontré la plaignante avant 2009, sur cette question de son rapport.

THE COURT: But the newly contested facts are this new conflict; Gervais' affidavit?

MR. RANCOURT: Oui, exactly. : Exactement. Et ensuite, au point (f)...

MR. DEARDEN: Your Honour, if I may?

THE COURT: Mr. Rancourt, you have to hold on a minute.

MR. DEARDEN: Your Honour, for the record, Mr. Rancourt makes that submission that he makes to you, that Professor St. Lewis failed to produce documents she was supposed to produce, but....

THE COURT: That's his argument.

MR. DEARDEN: But he....

THE COURT: It's not proof.

MR. DEARDEN: It's important to put on the record, Your Honour, that Justice Smith rejected that argument.

THE COURT: But you'll have an opportunity to do that. M. Rancourt? Monsieur Rancourt, continuez.

M. RANCOURT: Merci. Et ensuite, moi, je suis simplement en train de dire quelle était la pertinence de cet affidavit - n'est-ce pas? Et (f):

"Whether the circumstances merit leave for limited re-examination."

5 En d'autres mots, étant donné cet affidavit et ce qu'il amène, est-ce que j'ai le droit à une réexamination (sic)? Ça c'était l'argument qui utilisait l'affidavit de Mireille Gervais.

10 Ensuite, dans le même factum, il y avait une partie à la page 443. Il faut avancer à la page 443 du dossier de motion.

LE TRIBUNAL: Oui.

15 M. RANCOURT: Et puis ça c'est la section «order requested», comme vous voyez en bas de la page. Si vous tournez la page, le paragraphe 2 dans «order requested», c'était intitulé:

20 "Possible prejudice from facts discovered subsequent to the examination. A determination by the Court whether contested statements made by the plaintiff in the statement of claim, reply, and during her May 1st examination for discovery caused sufficient prejudice to the defendant to warrant ordering a new, but limited examination for discovery of the plaintiff."

25 Et en suite, le paragraphe trios,

"Possible insufficiency of plaintiff's searches for discovery."

30 Là encore, je parle cette - de ce courriel qui n'avait pas été produit. Et ensuite, au paragraphe 6:

"Production of documents refused pursuant to April 27th notice of examination."

Donc c'était aussi une motion pour produire des documents et si vous tournez la page au paragraphe 7, ça dit:

"An order compelling the plaintiff to comply with paragraph three of the notice of examination dated April 27th, 2012 and produce all communications, e-mails, letters, et cetera with any student appeal centre staff and/or about the student appeal centre in her possession, control, or power which are relevant to any matters in issue in this proceeding."

Elle a fourni aucun document de ce type-là. Donc dans ses - dans son examen pour découverte. Et donc ça c'était une autre raison que j'avais besoin de cet affidavit de Mireille Gervais. Ça c'est la raison d'être de l'affidavit de Mireille Gervais. LE TRIBUNAL: Mais sauf que cet affidavit de madame Gervais, c'est déposé - ça été déposé seulement - parce que toute ça, ça inclus les paragraphes que vous avez mentionnés, les pages 443 ou 445 là, ça c'est - ça c'est une partie des documents - ça c'est quoi exactement? M. RANCOURT: vous voulez dire dans quel document ça été mis?

"The responding party's defendant factum."

Vis-à-vis si vous devriez avoir le droit de réexaminer madame St-Lewis.

M. RANCOURT: C'est une motion de refus et de production suite à l'examen, au préalable.

LE TRIBUNAL: Okay.

M. RANCOURT: D'accord? Okay. Donc, maintenant, j'ai parlé de la raison d'être de cet - maintenant, monsieur Dearden en contraste, va vous parler d'accusations que j'ai faits contre la plaignante et lui se réfère à un autre document - qui est le document qui donne la raison d'être de ce document - lui se réfère - et si vous allez à l'onglet 6 de mon dossier de motion, ça c'est dans le tome 2 du dossier de motion, l'onglet 6...

LE TRIBUNAL: Uh-hmm.

M. RANCOURT: ...ça c'est Responding Party's Defendant's Factum.

LE TRIBUNAL: Non. J'ai....

ME RANCOURT: Je suis à l'onglet 6.

LE TRIBUNAL: Moi aussi.

ME RANCOURT: Du dossier de motion, tome 2.

LE TRIBUNAL: Ah, c'est moi qui trompe. Okay. Ça c'est 4. 6, okay. Je suis là. Ça c'est quoi ça?

M. RANCOURT: À la page 298 - est-ce que vous êtes à la page 298?

LE TRIBUNAL: Oui.

M. RANCOURT: Okay. Ça c'est le Responding Party's Defendant's Factum - ça c'est en réponse à la motion de la plaignante pour adresser les refus de madame Gervais suite à une examination (sic) de madame Gervais sur son affidavit. D'accord?

LE TRIBUNAL: Okay.

M. RANCOURT: Okay. Dans cette - donc, est-ce que - Monsieur le Juge, donc, la séquence est la suivante:

examen de la plaignante en examen au préalable,
suivi de motion pour refus. Cette motion pour refus
avait un affidavit de Mireille Gervais; Mireille
Gervais a été examinée sur son affidavit - elle a
refusé de répondre à des questions - et y'a eu une
motion de refus, pour les refus de madame Gervais.

LE TRIBUNAL: Oui.

M. RANCOURT: Et ça c'est ma réponse à cette motion
de refus qui est une motion de la plaignante -
n'est-ce pas?

LE TRIBUNAL: Oui.

M. RANCOURT: Okay. Dans cette affidavit (sic) - et
monsieur Dearden va faire un cas de ça - si vous
regardez à la page 301, dans la section «overview»
au paragraphe 3, donc à la page 301 de la section
«overview» au paragraphe 3...

LE TRIBUNAL: Oui.

M. RANCOURT: ...je dis:

"As part...."

Je dit,

"As part of this motion record for his discovery
refusals motion, the defendant filed an
affidavit of Mireille Gervais sworn July 9th.
The purpose of the said affidavit is to
establish that the plaintiff made false sworn
statements on May 1st, 2012 and in her statement
of claim. In order to support the defendant's
request for an order that the plaintiff be re-
examined, the said false statements relate to a
meeting which the plaintiff alleges to have
occurred between the plaintiff and Ms. Gervais."

5 Okay? Et ensuite - donc là, je suis dans - en
réponse à une motion de refus de madame Gervais qui
est - qui est - qui est la chose devant nous, auquel
j'aimerais - qui est la décision contestée en faite.
Et là, si vous allez un peu plus loin, dans ce même
factum à la page 306...

LE TRIBUNAL: Oui.

10 M. RANCOURT: ...alors c'est la section «the Law»,
n'est-ce pas? La partie (a):

“Plaintiff’s refusal motion brought in bad
faith.”

15 Donc, je suis en train d'argumenter que la motion de
refus pour les refus de madame Gervais, amenée par
la plaignante, que cette motion est faite en
mauvaise foi, pour des raisons qui sont impropres.
Et dans le contexte de cet argument-là, je dis le
paragraphe 24 qui est:

20 “The sworn and hard exhibit evidence of the
defendant’s affidavit, Mireille Gervais, shows
that the plaintiff repeatedly made false sworn
statements on may 1st regarding a meeting which
the plaintiff incorrectly alleges took place
between the plaintiff and Ms. Gervais.”

25 Et ensuite je dit, au paragraph 25,

“The plaintiff’s refusal motion is brought in
bad faith in that its sole purpose is to have
the affiant’s evidence excluded by any means.”

30 Ça fait partie de mon argument. Donc là, dans mon
argument, j'ai affirmé les choses de cette façon-là.

5 Monsieur Dearden prend cet argument-là et dit que voilà, il a osé affirmer une telle chose à propos d'un avocat, donc ça me donne tous les droits en contre-examinant son affiant. Je peux lui poser des questions sur sa crédibilité personnelle; je peux lui poser des questions - lui faire produire tous les documents que je veux, parce que c'est tellement gros ce qu'il a fait ici, ça, ça va être l'argument que vous allez entendre de la part de monsieur Dearden dans quelques instants. Je voulais juste vous le signaler.

15 On a déjà parlé du conflit factuel. Monsieur Dearden va dire qu'il a le droit de questionner la crédibilité personnelle de madame Gervais, dans le but qu'on puisse établir le poids de son affidavit et il va utiliser - il va utiliser comme argument qu'on peut regarder la partialité du témoin. Il va utiliser l'expression «part of....

20 LE TRIBUNAL: Non, mais je pense que vous êtes, avec tout respect...

M. RANCOURT: Oui.

LE TRIBUNAL: ...je pense que vous êtes en train de faire une erreur, dans le sens que...

25 M. RANCOURT: Oui?

LE TRIBUNAL: ...y'a - vous avez faites beaucoup de soumissions vis-à-vis les arguments que vous croyez que monsieur Dearden va faire. Ce n'est pas la motion. Ça ce n'est pas la motion de monsieur Dearden. C'est votre motion et votre - le seul - puis le but de votre motion, ça c'est pour - ça c'est de me convaincre aujourd'hui, que le Juge

30

Smith, que sa décision est en erreur, puis c'est simplement une suggestion...

M. RANCOURT: Merci, Monsieur le Juge.

LE TRIBUNAL: ...Monsieur Rancourt...

M. RANCOURT: J'apprécie beaucoup.

LE TRIBUNAL: ...que vous êtes en train d'utiliser votre temps...

M. RANCOURT: Je me déroute un peu.

LE TRIBUNAL: ...ici, bien, ça devrait être - le focus, ça devrait être là.

M. RANCOURT: Oui. Merci, Monsieur le Juge. Je reviens - je reviens à la charge en suivant vos suggestions. Merci beaucoup.

Donc - donc j'ajuste ici là. Alors j'aimerais vous amener, pour vous donner un sens du type de questions que monsieur Dearden a posées à la - à l'affiant et qui ont été refusées. J'aimerais vous amener, pour apprécier le type de questions, puis ensuite, la décision qui a été prise par rapport à ces questions - n'est-ce pas? Alors j'aimerais maintenant aller à mon factum, qui est le plus petit des livres qui est devant vous et j'aimerais aller au paragraphe 17 de ce factum. J'attends que vous soyez là, Monsieur le Juge.

LE TRIBUNAL: Parfait.

M. RANCOURT: Okay. Donc, là, c'est la section - the impugned (ph) decision. Et la sous-section est intitulée,

"Improper questions aimed solely at attacking personal credibility of the affiant."

5 Et là je dis, dans le paragraphe 17, en faite, je reproduis exactement les titres dans la charte des refus de la plaignante qui donne les grands thèmes des questions qui ont été refusées. Et la charte de refus de la plaignante est à mon onglet 4(2) de mon - de mon dossier de motion, qui est dans le tome 1 du dossier de motion - juste pour que vous puissiez le trouver facilement, si vous avez besoin de vous y référer.

10 LE TRIBUNAL: J'ai 4, puis - onglet 4, puis après ça, j'ai 4(2).

M. RANCOURT: C'est ça.

15 LE TRIBUNAL: Je n'ai pas - j'ai pas - je n'ai pas un onglet 4(1).

M. RANCOURT: C'est ça. Je n'ai pas mis d'onglet 4(1).

LE TRIBUNAL: Oui.

20 M. RANCOURT: J'ai mis un onglet 4(2) et ça, vous voyez, c'est le tableau des refus...

LE TRIBUNAL: Oui.

M. RANCOURT: ...de la plaignante.

LE TRIBUNAL: Oui.

25 M. RANCOURT: Et dans ce tableau de refus, par exemple, si vous allez à la première page, à la page 213 du dossier de motion, le titre c'est,

"Relationship between the defendant and Mireille Gervais."

30 Vous voyez ça?

LE TRIBUNAL: Oui.

M. RANCOURT: Et là, dans mon affidavit, vous voyez (a), c'est,

"Relationship between the affiant and the defendant."

LE TRIBUNAL: Oui.

M. RANCOURT: Donc j'ai simplement regroupé - parce que c'est difficile d'aller voir dans la charte tous les titres - j'ai voulu qu'on puisse regarder les titres rapidement - j'ai mis ça dans le paragraphe 17 de mon factum - n'est-ce pas?

LE TRIBUNAL: Oui.

M. RANCOURT: Et c'est pour vous donner les thèmes des types des questions que monsieur Dearden a tenté de poser. Donc la relation, ensuite

"Preparation of the affiant's affidavit. Blog articles written by the affiant about a plaintiff's report. Blog articles written by the affiant critical of a plaintiff's report. Affiant support of the defendant in a separate matter. Communications between the affiant and the defendant about the action. Interactions prior to November 2008 between the affiant and the plaintiff. Events prior to November 12, 2008, about a report written by the affiant. Affiant's silence following November 26 regarding not meeting the plaintiff."

Le fait qu'elle a rien dit au média ou je ne sais pas quoi,

"When the University contacted the affiant prior to...."

5 Et cetera. Donc ça c'est pour donner les thèmes, le type de questions qui ont été posées à l'affiante. Ces questions-là, Monsieur le Juge, je vous signale, sont jamais du type «Pourquoi vous affirmez ça?». Y'a eu très, très peu des questions qui tentaient de tester les évidences dans l'affidavit de Mireille Gervais. Les faits. Toutes les questions dans les refus sont des questions qui tentent d'attaquer la partialité et la crédibilité personnelle de l'affiante de sorte à diminuer le poids de son affidavit. Ce sont des questions de ce type-là. Et monsieur Dearden le dit ouvertement, c'est ça son but et il a argumenté ça devant le Juge Smith, que c'était ça son but.

10 Et si vous regardez maintenant la décision du Juge Smith - et cette décision, évidemment, est à l'onglet 2 de mon dossier de motion, donc il suffit d'aller à l'onglet 2 de ce même tome 1 de mon dossier de motion - évidemment, nous allons pas lire toute la décision, mais c'est juste pour vous signaler qu'elle est là - je pose la question:

25 «Qu'est-ce que monsieur Dearden a obtenu dans sa motion de refus, pour les refus de madame Gervais?»

La réponse, Monsieur le Juge - j'attends que vous soyez rendu....

LE TRIBUNAL: Je suis rendu.

30 M. RANCOURT: Okay. La réponse, Monsieur le Juge, il a obtenu tout - toutes les questions doivent être

répondues. Tous les documents doivent être produits.

LE TRIBUNAL: Non, ça ce n'est pas vrai. Le juge a refusé au moins deux.

M. RANCOURT: Ah, okay. Je - je - j'ai - en préparant, je me suis peut-être trompé.

LE TRIBUNAL: Ah. Ce n'est pas grave.

M. RANCOURT: C'est peut-être psychologique.

LE TRIBUNAL: La grande majorité, oui.

M. RANCOURT: La grande, grande majorité,...

LE TRIBUNAL: Oui. Oui.

M. RANCOURT: ...je me souviens plus quels deux qu'il a pu refuser là, mais essentiellement, disons, essentiellement toutes les questions, je crois toutes les productions, il a - le juge a fait aucune mention des règles ou des tests pour production d'un non-partie. Aucune mention. Le juge n'a fait aucune mention du principe litigation privilege, aucune mention. Le juge a fait aucune mention des tests établis et à la Cour d'Appel et à la Cour Divisionnelle pour les questions appropriées relatives à la crédibilité d'une affiante dans une motion. Aucune motion de ces tests établis n'est donnée dans les raisons.

Et donc, maintenant, je passe à Loi, à ce que...

LE TRIBUNAL: Ça c'est peut-être un bon moment pour - on va prendre la pause du matin.

M. RANCOURT: D'accord.

LE TRIBUNAL: On va prendre 15 minutes.

M. RANCOURT: 15 minutes.

LE TRIBUNAL: Avant de faire ça, est-ce que vous êtes d'accord avec la mention par Me Dearden, que jusqu'à date dans ce procès, les parties ont présenté 27 motions?

M. RANCOURT: Non, je ne connais pas ce chiffre-là.

LE TRIBUNAL: D'accord.

M. RANCOURT: Je ne connais pas le chiffre précis.

LE TRIBUNAL: Oui.

M. RANCOURT: Je sais que c'est plus que 20.

LE TRIBUNAL: Oui.

M. RANCOURT: Et....

LE TRIBUNAL: Le juge - Juge Smith a mentionné 20.

M. RANCOURT: Je ne connais pas le chiffre précis, mais il faut dire que beaucoup de ces - certaines de ces motions-là n'ont jamais été entendues parce que, par exemple, j'ai fait des motions de «stay» qui n'étaient pas nécessaires à certains moments. J'ai fait....

LE TRIBUNAL: Est-ce que vous êtes - est-ce que vous êtes d'accord que les parties qui sont présentées jusqu'à date, entre 20 puis 27 motions?

M. RANCOURT: Oh, oui. Je crois.

LE TRIBUNAL: Okay.

M. RANCOURT: Mais - mais, je ne sais pas si elles ont été présentées. Je sais que le nombre total de ce qui a été...

LE TRIBUNAL: Déposé - déposé.

M. RANCOURT: ...soumis...

LE TRIBUNAL: Oui.

M. RANCOURT: ...est dans cette gamme-là, mais y'en a qui ont été réglées, y'en a qui n'ont jamais été entendues, etcetera, mais certainement soumis.

LE TRIBUNAL: Okay.

M. RANCOURT: En anglais, on dit «Filed».

LE TRIBUNAL: Oui.

M. RANCOURT: Neuf de ces motions ont été argumentées
par les parties adversaires.

LE TRIBUNAL: C'est juste par intérêt. Okay. On va
prendre 15 minutes. Merci.

GREFFIER DE LA COUR: Levez-vous, s'il vous plait.
Please rise.

R E C E S S

[11:40 a.m.]

U P O N R E S U M I N G

[12:00 p.m.]

M. RANCOURT: Merci, Monsieur le Juge.

LE TRIBUNAL: Monsieur Rancourt.

SUITE DES SOUMISSIONS PAR M. RANCOURT:

Donc, j'allais juste commencer la partie des
arguments légaux. Alors je vais - je vais vous
signaler des points saillants dans la jurisprudence
qui sont pertinentes à ces - à une affiante dans une
motion, dont trois domaines de jurisprudence,
Monsieur le Juge. Le premier, c'est le test pour des
questions appropriées en examinant une affiante dans
une motion. Ça c'est le premier domaine.

LE TRIBUNAL: Uh-hmm.

M. RANCOURT: Le deuxième domaine, c'est
l'application de ce qu'on appelle en anglais
«litigation privilege» - en français, on pourrait
dire «privilège des opposants dans un litige» - je
connais pas le terme français exact. Et le
troisième domaine, ce sont les règles et le test,

parce que et des règles dans le «Civil procedures» et le test établi dans la jurisprudence pour un ordre de production contre un non-partie, une personne....

LE TRIBUNAL: pour un ordre - pour un ordre?

M. RANCOURT: De production des documents...

LE TRIBUNAL: Production, oui.

M. RANCOURT: ...contre une personne qui n'est pas une partie dans l'action.

LE TRIBUNAL: Oui.

M. RANCOURT: Okay? Donc ça, ce sont les trois domaines de jurisprudence que je veux vous pointer à des choses saillantes là, dans ces trois domaines-là.

LE TRIBUNAL: Oui.

M. RANCOURT: Le premier, donc, les questions appropriées...

LE TRIBUNAL: Oui.

M. RANCOURT: ...sur un affiant dans une motion.

LE TRIBUNAL: Oui.

M. RANCOURT: Le principe fondamental a été affirmé et par la Cour Divisionnelle et par la Cour d'Appel sur exactement cette question-là et c'est - ces autorités-là ne sont pas citées par le Juge Smith. Et le principe fondamental, je pourrais l'exprimer de la façon suivante, Monsieur le Juge:

un juge ne peut pas régler un conflit dans l'évidence en se basant sur la crédibilité pour déterminer le poids des évidences parce que, avec une affiante dans une motion, le juge ne peut pas déterminer la crédibilité à partir du procès sur papier. Ça c'est le principe fondamental qui a été

5 affirmé plusieurs fois et donc, je vais aller à la première affirmation d'une Cour Supérieure - donc je vais maintenant utiliser, Monsieur le Juge, mon livre d'autorités, qui est le plus gros livre qui est devant vous - il y a 28 onglets, Defendant's Book of Authorities.

LE TRIBUNAL: Je l'ai.

10 M. RANCOURT: Oui? Alors, je vais aller à l'onglet 11. Ah, avant, je vais vous signaler à l'index, que j'ai présenté les cas en ordre alphabétique, alors si jamais on veut trouver rapidement, ils sont en ordre alphabétique.

LE TRIBUNAL: Merci.

15 M. RANCOURT: Et puis, je vais aller à l'onglet 11 et ça, vous voyez, c'est une décision de la Cour Divisionnelle - je peux appeler ça «Moyle» - Moyle, Léa (ph) contre je ne sais pas - et elle date de 1995.

LE TRIBUNAL: Uh-hmm.

20 M. RANCOURT: Et là, je vous amène à la page 2 de cette décision. Et les paragraphes ne sont pas numérotés et je m'excuse, je n'ai pas encerclé les paragraphes pour vous. Je l'ai fait dans la version électronique. Ça s'est perdu à l'impression. Je m'excuse de ça, mais je parle du deuxième
25 paragraphe, donc un tout premier paragraphe en haut de la page, une phrase et ensuite, le deuxième paragraphe à la page 2, n'est-ce pas? Alors, je vais lire le - c'est très important cette affaire:
30

5 "A motion judge hearing an application is unable to decide a disputed issue of material fact contained in affidavit evidence or the transcripts of cross-examination of the deponents of the affidavits. When faced with a dispute in the evidence about a fact material in the issue essential to resolution of the subject matter of the application, a motion judge must either direct a trial of an issue in respect of the fact in dispute or convert the application into an action. The scope of cross-examination of a deponent on an affidavit served on an application is influenced by the limited role of a motion judge in resolving conflicting evidence in respect to a material fact. The cross-examination - the scope of cross-examination in the case of an application is considerably narrower than at trial. Because...

15 Et ça c'est la raison,

...because the motion judge cannot decide the credibility of affidavit witnesses. The scope of cross-examination in respect to credibility does not include cross-examination intended to impeach the character of the witness. To the extent that credibility is a relevant issue all questions may be asked which tend to expose the errors, omissions, inconsistencies, exaggerations, or improbabilities of the deponent's testimony contained in his or her affidavit. However, a broader cross-examination designed to impeach the character of the witness will rarely, if ever, be proper."

25 Ça c'est la Cour Divisionnelle qui explique ça.

Et....

MR. DEARDEN: That was the head note, Your Honour.

THE COURT: It is.

30 M. RANCOURT: Okay. C'est peut-être quelque chose qui m'a échappé là. Ensuite, si nous passons....

LE TRIBUNAL: Tout ça pour dire que ça c'est quelqu'un d'autre que le juge qui donne une interprétation, un résumé très bref...

M. RANCOURT: Oh.

LE TRIBUNAL: ...des principes dans la cause.

M. RANCOURT: Oh, j'avais toujours supposé que c'était le juge...

LE TRIBUNAL: Des fois....

M. RANCOURT: ...qui écrivait ça.

LE TRIBUNAL: Non, non. Ce n'est pas le juge qui fait ça.

M. RANCOURT: Oh.

LE TRIBUNAL: C'est quelqu'un qui travaille pour les compagnies qui vont publier l'édition, et cetera. C'est quelqu'un d'autre là.

M. RANCOURT: Ah, okay.

LE TRIBUNAL: Des fois, il y a des erreurs entre le texte de la décision puis ce préalable...

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: ...écrit par quelqu'un d'autre. C'est tout.

M. RANCOURT: Oh. Bien j'ai - j'ai - il faudrait que je prenne le temps pour aller chercher les paragraphes qui disent ça, mais là, je n'ai pas - je n'ai pas le temps de faire ça.

LE TRIBUNAL: Oui.

M. RANCOURT: Alors je vais le laisser là pour l'instant.

LE TRIBUNAL: D'accord.

M. RANCOURT: Mais peut-être pendant le lunch, je pourrai faire ça ou quelque chose comme ça.

Donc là, cette décision de Moyle, y'a un exemple récent d'application de cette décision de Moyle, à cette Cour-ci qui date de 2011 dans le cas d'une motion de refus et d'un affiant dans cette motion. Donc c'est une application précise à notre cas et ça, c'est à l'onglet 6. J'aimerais vous emmener à l'onglet 6. C'est la décision «Hinke» (ph). Je vais l'appeler «Hinke»; elle date de 2010. Je vais, à la page 3 de cette décision et là, ce sont des paragraphes numérotés, et la première chose à signaler, c'est que dans cette décision, on cite le cas Caputto et ça dit que «Caputto», au paragraphe 10,

“Provides an excellent summary on the right to cross-examine the opponent (sic) of an affidavit.”

Parce qu'il faut savoir que la description de Capputo qui est assez longue, qui est reproduite ici dans le paragraphe 10 en grande partie, est peut-être la chose la plus citée par rapport à ce problème, parce que ça fait une revue et ça donne tous les principes pour - pour une affiante dans une motion.

Et le dernier point, si vous voulez le «bullet» là, à la fin, c'est «You can - ça c'est dans Caputto, donc:

“You can....”

Ça c'est dans Caputto donc,

"You can be cross-examined on the truth of facts
deposed or answers given, but not on relevant
issues directed solely at credibility."

Et un peu plus haut, il cite encore Caputto:

"A deponent may be cross-examined on any fact
set out in his or her affidavit, but also on any
fact in his or her knowledge which is relevant
to the determination of the motion. Cross-
examination may also be directed towards the
credibility of the evidence."

Et ça c'est une distinction très importante à faire,
vous allez voir. Crédibilité de la personne pour
donner le poids, c'est très différent de ce que les
juges vont appeler «crédibilité de l'évidence». Et
là, donc, je reste dans cette décision de «Hinke» et
je vais maintenant à la page 4, parce que la même
décision est en train de nous parler des tests - je
vais à la page 4, et au paragraphe 13, on dit:

"Cross-examination on relevant credibility
issues is permissible on a motion "to expose the
errors, omissions, inconsistencies,
exaggerations, or improbabilities of the
deponent's testimony contained in his or her
affidavit" as such cross-examination is directed
at attacking the foundational facts to eliminate
or reduce "any contradictory evidence in respect
to the fact".

Et là il cite Moyle qui est la décision de la Cour
Divisionnelle. Et j'espère qu'il n'a pas cité le
préambule comme moi j'avais fait là, mais je pense
qu'il cite correctement Moyle. Okay? Donc ça, ça

montre une application de Moyle, précisément au cas d'une motion.

Donc on voit qu'il y a une distinction importante à faire entre crédibilité des faits vis-à-vis des contradictions factuelles et crédibilité du témoin vis-à-vis le poids de son affidavit. Et on va le revoir ça, dans la décision centrale de la Cour d'Appel. Et donc, je vous amène à la Cour d'Appel, qui est la plus haute autorité sur cette question-là, à l'onglet 12 et ça c'est la décision Newcastle, 2005, assez récent. Et je vais à la page 3 de cette décision de Newcastle de la Cour d'Appel de l'Ontario...

LE TRIBUNAL: Oui.

M. RANCOURT: ...à la page 3, il y a le paragraphe 11. Paragraphe central est très important. Il lit comme suit:

"It is beyond the proper role of an application judge to determine the credibility of a deponent to resolve material facts which are disputed and which may affect the result."

Ça c'est très clair. C'est une décision de la Cour d'Appel de l'Ontario. Très, très important. Très récente, 2005. Et cette décision de la Cour d'Appel, pour appuyer et pour commenter ce qu'elle vient de trouver, elle cite Moyle, donc la décision de la Cour Divisionnelle dont je viens de parler - n'est-ce pas - mais elle cite aussi et ça c'est important, elle cite «Yo v. Kang» (ph). Vous voyez? Je suis encore au paragraphe 11 et dans le

paragraphe 11, on cite «Yo v. Kang» et la Cour d'Appel cite le paragraphe 24 de «Yo v. Tang», n'est-ce pas?

LE TRIBUNAL: Oui.

M. RANCOURT: Alors, je veux vous emmener au paragraphe 24 de «Yo v. Tang» qui est à l'onglet 23.

LE TRIBUNAL: Oui.

M. RANCOURT: Alors, vous voyez, je suis à l'onglet 23, c'est «Yo v. Kang» (ph) et c'est 2002 et là, ça c'est cité par la Cour d'Appel. Et je vais à la page 6 de cette décision et je vais au paragraphe 24, un paragraphe très important parce que la Cour d'Appel a cité précisément ce paragraphe-là avec approbation et le paragraphe 24 dit:

"I have quoted the applicant's and respondent's factum at length because I have a discretion on an application of this nature to direct the trial of an issue."

Et ensuite il dit,

"It is not open to a judge on an application, where affidavits and examinations in transcript form are the only evidence before the Court, to decide the credibility of the witnesses in anything other than the clearest of cases where the facts are in essence unopposed or the facts are so clear that there is no genuine issue to be tried."

Donc ça c'est le paragraphe qui est cité par la Cour d'Appel de l'Ontario dans «Yo v. Kang» (ph).

Ensuite, j'aimerais montrer une application à une motion, une affiante dans une motion, de la décision

de Cour d'Appel de Newcastle et pour ce, je vous amène maintenant à l'onglet 9.

LE TRIBUNAL: Oui.

M. RANCOURT: C'est la décision MDW v. MW qui date de 2008 et je vais à la page 4 de cette décision de la Cour Supérieure de l'Ontario, la page 4. Alors, la raison que je donne ce cas, c'est que ça, c'est l'application de la position Cour d'Appel à une motion, à une affiante dans une motion, n'est-ce pas? ET vous voyez au paragraphe 13 à la page 4:

"In Newcastle Recycling Limited v. the Municipality of Clarington, 2005, the Ontario Court of Appeal spoke to the issue of motion judges determining credibility based on competing affidavits. Juriantz (ph), judge stated in paragraph 11...

Et là il cite dans le cas d'une motion, la Cour d'Appel:

...it is beyond the proper role of an application judge to determine the credibility of a deponent to resolve material facts which are disputed and which may affect the result."

Malgré ces décisions non-ambigües de la Cour Divisionnelle en Moyle et de la Cour d'Appel en Newcastle, les parties opposantes vont souvent tenter de confondre crédibilité de l'évidence avec crédibilité des témoins. Et Monsieur le Juge, ce n'est pas la première fois que ça arrive. Je vais vous amener une autorité où justement les parties qui s'opposaient ont essayé de créer cette confusion-là, et vous allez voir comment le juge a

répondu. Alors je vous amène à une décision de 2007, à l'onglet 16. C'est la décision de Pinto, qui date de 2007. Alors ça c'est un cas - alors on va voir, on va d'abord à la page 3, on va voir le contexte. À la page 3, je vous amène au paragraphe 18, très important, Monsieur le Juge.

Au paragraphe 18, le juge écrit:

"The appellants argue the master was clearly wrong in their mis-application of the principles in R. v. Searway (ph)...

Ça c'est important parce que monsieur Dearden utilise la décision Seaway (ph) de la même façon qu'ici,

...in that case Master Sanders sets out the following principles...."

Et là, il cite Seaway (ph) et la troisième, vous voyez dans Seaway (ph) c'est:

"Is the question, in a bonafide way, being directed to an issue on the motion, or the credibility of the witness?"

Et c'est cette - c'est cette citation-là qu'on utilise à mauvais - à mauvais égards et qui est réutilisée quelques fois par différentes parties. Et au paragraphe 19, vous voyez:

"The appellant argues the master erred in referring to R. v. Searway (ph) for the

proposition that questions generally addressing credibility can be asked in a motion."

Ça c'était l'argument qui était fait. Maintenant, regardez comment le juge a tranché la question: on va à la page 5 de cette décision. Au paragraphe 27, le juge dit:

"I conclude that the master's order cannot stand."

Ensuite, au paragraphe 2, très - euh excusez-moi, le paragraphe 31, je me suis trompé là, sur la même page 5, je vais au paragraphe 31:

"The respondents argue the decision in R. v. Moyle...

Ça c'est la même décision de la Cour Divisionnelle dont j'ai parlé tantôt...

...applies to make permissible questions about D'Agostino's credibility. I do not accept that argument. R. v. Moyle places a limit on when a deponent can be cross-examined as to their credibility. That is, a deponent can be cross-examined with respect to the truth of facts deposed in her affidavit."

Le paragraphe 32,

"I agree with the appellants that the questions on D'Agostino's credibility are not relevant because the affidavit sworn by D'Agostino and Froise (ph) in support of the pleading motion do not put D'Agostino's credibility in issue and do not raise issues as to D'Agostino's pension entitlement."

Donc, des questions factuelles ne sont - n'ont pas été mis en cause et donc, on ne peut pas poser des questions, même sur ces questions factuelles qui pourrait...

LE TRIBUNAL: Mais il y a un conflit là. Il y a - il y a un conflit ici,

"Because the affidavit sworn by D'Agostino and Froise (ph) in support of the pleading motion do not put D'Agostino's credibility in issue."

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Puis c'est - est-ce que - n'êtes-vous pas d'accord que la crédibilité de madame Gervais est directement en question, à cause des portions des examens, etcetera, que vous avez - vous avez faits en revue avec - il y a un conflit direct entre les deux, entre les deux dames.

M. RANCOURT: Absolument - absolument pas, Monsieur le Juge. Absolument pas, parce que - parce que une - on ne - ça c'est un conflit de faits et on ne peut pas et ça c'est les autorités que je viens de vous lire, on ne peut pas résoudre un conflit de faits, de différents témoignages, de différents affidavits opposants...

LE TRIBUNAL: Parle-en pas ici.

M. RANCOURT: ...en attaquant la crédibilité de sorte à donner moins de poids à un des affidavits. Ce n'est pas permis dans une motion.

LE TRIBUNAL: D'accord. Continuez.

M. RANCOURT: Et le principe central - le principe central, c'est qu'un juge dans une motion ne peut pas déterminer la crédibilité basée sur le procès en

papier. C'est ça le principe fondamental qui a été répété et à la Cour Divisionnelle et à la Cour d'Appel, okay? Et donc, à la fin, il dit:

"In the result, I find the master was clearly wrong in ordering D'Agostino to re-attend cross-examination to answer the refused questions."

Okay?

LE TRIBUNAL: Oui.

M. RANCOURT: Donc c'est un exemple assez semblable là de ce qui nous arrive aujourd'hui. Bon, ensuite, dans la décision du 7 décembre qui est la décision contestée dont on parle...

LE TRIBUNAL: Oui.

M. RANCOURT: ...le Juge Smith a cité, en appui de sa position, deux autorités: une c'est une autorité de la Cour d'Appel, R. v. Watson - alors on peut - on peut aller aux paragraphes 12 et 13 dans l'onglet 2 du tome 1 du dossier de motion pour voir la décision contestée - et vous voyez, au paragraphe 12, le Juge Smith cite R. v. Watson. R. v. Watson, Monsieur le Juge, est à mon onglet 18. On peut aller à l'onglet 18.

LE TRIBUNAL: Oui.

M. RANCOURT: Monsieur le Juge, cette autorité, bien qu'elle soit de la Cour d'Appel, n'a rien à voir avec une affiante dans une motion. Il s'agit d'un contre-examinatoire (sic) en procès, dans un procès criminel. C'est complètement des pommes et des oranges. Ça n'a rien à voir avec une affiante dans une motion. Et c'est très - et - et - il suffit de

survoler la chose, pour voir que c'est en faite le cas. Par exemple, à la page 34 de cette décision, on donne un peu le contexte. Il parle, par exemple, dans le dernier paragraphe de la page 34 - les numéros sont pas - les paragraphes ne sont pas numérotés - mais j'ai trouvé que les paragraphes clés qui permettent de vraiment bien cerner de quoi il s'agissait là, c'était le dernier paragraphe de la page 34 et les prochains paragraphes de la page 35. Et là on voit,

"Cross-examination on prior criminal convictions is permitted under section 12 of the Canada Evidence Act."

Et cetera,

"A criminal record can be put into evidence, cross-examined on...."

Et cetera, on parle de la situation dans ce cas-ci où y'avait même pas un affidavit. C'était une question: est-ce qu'on peut contre-examiner le témoin dans une cause criminelle par rapport à des - à d'anciennes convictions qu'il a eues, de sorte à attaquer sa crédibilité ou de sorte à montrer qu'il y a problème avec son évidence, qu'il y a contradiction. Et on dit - on dit au deuxième paragraphe de la page 35:

"A witness' credibility may be impeached by cross-examination intended to show that the witness has a bias for or against the party to the litigation or a personal interest to be served by testifying in a particular matter."

5 Okay? Donc évidemment c'est quelqu'un - et ça c'est un cas de meurtre, quelqu'un avait tué quelqu'un et cet - ce témoin disait qu'il n'avait rien à faire avec ça. Alors, quelles étaient ses associations avec le meurtrier et cetera, c'était ce genre de questions. C'était - c'est complètement différent. Ça n'a rien à voir avec un affiant dans une motion.

10 Ça c'est la première - ça c'est la première autorité citée par le Juge Smith qui lui avait été suggérée par monsieur Dearden. La deuxième autorité citée par le Juge Smith, est à la page 3 de la décision contestée. Dans le paragraphe 13, le Juge Smith parle de Bruce v. McQueary Premium Funding Incorporated. Alors, cette autorité de 2010 par Bruce, elle est à l'onglet 3 de mon livre des autorité. Alors y'a deux choses importantes avec cette autorité. Premièrement, le cas devant le juge dans cette autorité n'avait strictement rien à voir avec la crédibilité ou de l'évidence ou d'un affiant. Le cas n'était pas à propos de la crédibilité. Première chose. Deuxièmement - et ça, vous pouvez l'éplucher avec une loupe, vous n'allez pas trouver qu'il y avait une question de

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crédibilité dans ce cas-là.

Deuxièmement, dans le contexte général pour déterminer le test pour répondre à des questions de refus, le juge a fait un survol des tests et donc, à son paragraphe 8, à la page 2, par exemple - au paragraphe 8 de la page 2, c'est là qu'il cite une autre autorité de la même Cour: Coburn v. Toronto.

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Et en citant Coburn v. Toronto, il y a le point 3 dans le paragraphe 8 qui dit:

"Does it relate to the witness' credibility?"

Donc là, il est en train de faire un survol des autorités qui parle des tests et une des autorités qu'il cite, c'est Coburn v. Toronto - il l'a cite simplement. Il ne l'applique pas ce - ce -ce point par rapport à la crédibilité, parce qu'il ne s'agissait pas de crédibilité.

Ensuite, vous passez au prochain paragraphe, le paragraphe 9...

THE COURT: Sorry.

M. RANCOURT: Ah oui.

LE TRIBUNAL: C'est mentionné au paragraphe 8,

"Thus in dealing with refusals a Court should consider each question refused on the following three criteria. One, two, three."

MR. RANCOURT: Oui.

THE COURT:

"If the answer to any of these is yes...

Incluant,

...does it relate to the witness' credibility?
The question...

MR. RANCOURT: Exact.

THE COURT:

...must be answered."

MR. RANCOURT: Exact. Alors c'est ça que je veux vous amener, c'est parce ce que ça - ça - ça semblerait être une contradiction avec la Cour d'Appel, la Cour Divisionnelle et je vais vous expliquer le pourquoi ça semble être une contradiction. En fait, ce n'est pas une contradiction.

LE TRIBUNAL: D'accord.

M. RANCOURT: Okay? Et donc, il cite Coburn v. Toronto au paragraphe 8 et ensuite au paragraphe 9, il cite Caputto qui est considéré le test, la chose le plus citée et là, il cite correctement Caputto.

Alors, vous voyez qu'il cite deux choses pour montrer des exemples de comment on établie ce test, mais en fait, il n'a jamais appliqué la question de crédibilité parce que dans Caputto, vous voyez qu'il cite là, en bas du paragraphe 9:

"You can be cross-examined on the truth of facts deposed or answers given by not - but...

Je pense c'est supposé être «but»...

...but not on irrelevant issues directed solely at credibility."

Okay? Donc il cite Caputto, que tout le monde est d'accord et consistant avec la Cour d'Appel et la Cour Divisionnelle. Il cite les deux et ça ne

traite pas de crédibilité et ça serait - et en fait, Coburn v. Toronto est une exception. C'est vraiment extraordinaire qu'un juge ait dit les choses sans faire plus attention. Si on regarde spécifiquement à Coburn v. Toronto, je l'ai aussi - ah oui, c'est à l'onglet 4 - c'est à l'onglet 4 et si on va....

LE TRIBUNAL: Mais tout ça pour dire que vous allez - vous êtes en train de dire que pour vous, les éléments du test - on trouve les éléments du test dans Caputto puis pas dans Coburn?

M. RANCOURT: C'est-à-dire que Coburn n'avait pas l'intention de m'y diriger mais comme c'était pas - ça le concernait pas, il a cité ça.

LE TRIBUNAL: Ah.

M. RANCOURT: Parce que voyez-vous la confusion vient du fait que....

LE TRIBUNAL: Non, non, non. Ça ce n'est pas ma question.

M. RANCOURT: Oh.

LE TRIBUNAL: Est-ce que vous êtes d'accord que moi, si je veux aller chercher pour trouver les éléments du test, les éléments de ce test sont exprimés correctement dans l'arrêt de Caputto?

M. RANCOURT: Oui, mais pas le principe. Le principe fondamental, il vient de la Cour d'Appel et de la Cour Divisionnelle.

LE TRIBUNAL: Est-ce que vous êtes d'accord que les éléments de la - de ce test ne sont pas exprimés correctement dans l'arrêt de Coburn?

M. RANCOURT: Dans Coburn - ça c'est?

LE TRIBUNAL: Paragraphe numéro 8.

M. RANCOURT: Euh...

LE TRIBUNAL: De l'onglet numéro 4.

M. RANCOURT: ...paragraphe numéro - de l'onglet -
lequel?

LE TRIBUNAL: Ça c'est l'onglet 4.

M. RANCOURT: Quatre (4). Paragraphe numéro?

LE TRIBUNAL: Huit (8).

M. RANCOURT: Je suis à l'onglet 4. Il n'y a pas de
paragraphe.

LE TRIBUNAL: Okay.

M. RANCOURT: Vous voulez dire la page 4?

LE TRIBUNAL: Ah excusez-moi. Excuse. Non, c'est
moi qui se trompe. Je m'excuse. C'est l'onglet 3.

M. RANCOURT: L'onglet 3, Bruce....

LE TRIBUNAL: Paragraphe 8...

M. RANCOURT: Oui.

LE TRIBUNAL: ...qui récite...

M. RANCOURT: Ça cite Coburn.

LE TRIBUNAL: ...Coburn puis ça nous donne aussi les
portions de la décision dans Coburn.

M. RANCOURT: Oui.

LE TRIBUNAL: Coburn indique les éléments du test,
un, deux, trois.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est votre position que cette
expression du test n'est pas exacte?

M. RANCOURT: N'est pas exacte, parce qu'elle a une
ambiguïté, parce qu'elle ne distingue pas entre
crédibilité des évidences et crédibilité du témoin.

LE TRIBUNAL: D'accord.

M. RANCOURT: Donc, ça porte à confusion, parce que
cette distinction est fondamentale. C'est tout ça -
la distinction qu'il faut faire et les parties qui

veulent avoir des réponses ont tendance à brouiller cette distinction-là. C'est très commun. Je vous ai donné un exemple ici je pense qu'il y aura un autre exemple cet après-midi de ça.

Alors, ça c'est pour la - ah oui, une autre - une autre - un autre point que j'aimerais - bien, la seule autre chose que je peux dire avant de passer au prochain thème de droit, c'est dans mon affidavit quand je parle de droit, vous voyez au paragraphe 45 de mon affidavit...

LE TRIBUNAL: De votre factum?

M. RANCOURT: ...de mon factum, je m'excuse.

LE TRIBUNAL: Oui, oui, non, non, c'est rien.

M. RANCOURT: Au paragraphe 45 de mon factum, à la page 15 de ce factum, j'ai cité deux, quatre, sept autorités récentes qui citent avec approbation Caputto et qui disent: «C'est ça le test qu'il faut utiliser». Et donc, c'est - personne - personne cite Coburn, presque personne à part cette exemple qui cite aussi Caputto, mais qui est juste en train de donner des exemples.

LE TRIBUNAL: Okay.

M. RANCOURT: Okay?

LE TRIBUNAL: Oui.

M. RANCOURT: Voilà. Alors, juste une petite note rapide pour dire pourquoi c'est important cette question de crédibilité. C'est très, très grave si la décision du Juge Smith n'est pas examinée en appel et tient, parce que dans les mains d'un avocat habile comme monsieur Dearden, ça ouvre la porte grande pour que tout affiant puisse être soumis à un

examen de sa crédibilité personnelle dans le but de déterminer le poids de son affidavit. Ça ouvre la porte tout grande. Si vous regardez la façon qu'est écrite la décision du Juge Smith, et on peut le regarder ensemble, le langage de cette décision-là, on n'arrête pas de parler de la crédibilité de madame Gervais, de sa crédibilité, «her credibility» et du poids qu'on doit mettre sur l'affidavit basé sur cette crédibilité-là. C'est répété maintes et maintes fois. Je l'ai cité dans mon factum plein de fois. Donc ça ouvre la porte.

Ensuite - il suffit de regarder ce langage. Et ça c'est un problème, Monsieur le Juge, parce que ça rendrait très difficile qu'un affiant accepte de se faire examiner de cette façon-là. Ça serait difficile d'obtenir des affiants pour emmener des preuves. Ça - ça - j'ose dire que cette décision causerait un très mauvais tournant dans la pratique des motions. Très mauvais tournant dans la pratique des motions. C'est donc juste ce point-là sur la crédibilité, le fait que le Juge Smith n'a pas cité les bonnes autorités, n'a pas mentionné cette distinction à faire entre les faits qu'il faut déterminer, la crédibilité des faits, si on veut, et la crédibilité de la personne pour attribuer le poids à l'affidavit. Le fait qu'il n'y en ait pas question, puis c'est comme si c'était tout à fait légitime d'aller attaquer la crédibilité du témoin, de cette façon-là, ça ouvre la porte. C'est désastreux à mon sens.

Et maintenant, je vais passer au deuxième thème légal qui est devant nous aujourd'hui. C'est la question du privilège des opposants dans un litige, «Litigation privilege».

Alors je vais commencer au paragraphe 67 de mon factum, parce que là, au paragraphe 67 de mon factum, je montre les questions en refus ou le privilège des opposants dans un litige étaient directement mis en cause et auraient dû être examinées. Alors, si vous voyez le paragraphe 67 de mon factum, on parle des questions 23 à 30 et 35 à 36, dans ce que le Juge a appelé «issue (b)». La question 53 que vous allez retrouver dans la charte des refus, dans «issue (f)», et les questions 134 à 137, dans «issue (k)» qui est dans le factum.

Alors, ça se sont les places où y'aurait dû avoir - il devait avoir - y'avaient un devoir de faire une examination (sic) à savoir si les réponses étaient protégées par «litigation privilege» et y'a eu aucune examination (sic) de cette question-là.

Alors maintenant, je vais vous montrer le droit qui établie que y'aurait dû avoir une telle examination (sic). En fait, le Juge Smith, non seulement n'a jamais fait appel à ce principe, ne l'a jamais mentionné....

LE TRIBUNAL: Mais, excuse-moi. Je - y'a quelque chose que je ne comprends pas.

M. RANCOURT: Oui?

LE TRIBUNAL: Il y a une - pour ce genre de privilège - non, non, ça c'est «assist a client» - «litigation privilege» - mais ce privilège, ça existe en litige là, entre un avocat puis le client.

M. RANCOURT: Non, justement.

LE TRIBUNAL: Okay.

M. RANCOURT: Et alors, vu - étant donné votre question Monsieur le Juge, nous allons aller directement à l'autorité de la Cour Suprême du Canada qui définit...

LE TRIBUNAL: D'accord. Ah oui,

M. RANCOURT: ...qui définit «litigation privilege» et qui le distingue de «solicitor client privilege».

LE TRIBUNAL: Mais cette décision de la Cour d'Appel - de la Cour Suprême indique que ce privilège est applicable aussi dans le cas de quelqu'un qui est non représenté.

M. RANCOURT: Tout à fait. Oui.

LE TRIBUNAL: Okay.

M. RANCOURT: Tout à fait. En d'autres mots, c'est...

LE TRIBUNAL: Il y a un privilège...

M. RANCOURT: ...c'est la personne en litige.

LE TRIBUNAL: ...en d'autres mots, il y a un privilège entre vous et madame Gervais.

M. RANCOURT: Absolument.

LE TRIBUNAL: Oui.

M. RANCOURT: Pour préparer le litige.

LE TRIBUNAL: Vous avez le même privilège.

M. RANCOURT: J'ai le - ben, c'est plutôt l'avocat qui a le privilège «litigation privilege», en plus du privilège «Solicitor client».

LE TRIBUNAL: Continuez.

M. RANCOURT: Okay? Donc, puisque vous posez la question, nous allons aller directement à la Cour suprême du Canada qui est à l'onglet 2 de mon livre des autorités. Et je vais aller à la page 15 de cette autorité. Heureusement là, j'ai - je suis allé dans les paragraphes numérotés, donc ce n'est pas l'opinion de quelqu'un d'autre. Alors voici: à la page 15 de cette décision de la Cour suprême qui est Blank v. Canada, de 2006, le paragraphe 27 explique la chose suivante:

"Litigation privilege, on the other hand, is not directed at still less restricted to communications between solicitor and client. It contemplates as well communications between the solicitor and third parties or in the case of an unrepresented litigant, between the litigant and third parties. Its object is to ensure the efficacy (sic) of the adversarial process and not to promote the solicitor/client relationship. And to achieve this purpose, parties to litigation, represented or not, must be left to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure."

Ça c'est le paragraphe 27. Ensuite, je vais lire quelques extraits du paragraphe 28, si vous permettez? Au paragraphe 28, la Cour dit:

"R.J. Sharpe (ph) has explained particularly well the differences between litigation privilege and solicitor/client privilege."

Et là, si vous permettez dans ce paragraphe, je vais sauter là, juste pour les parties qui concernent

«litigation privilege», donc un peu bas, disons la deuxième ou troisième phrase dans le premier paragraphe qui est cité là:

“Litigation privilege, on the other hand, applies to communications of a non-confidential nature between the solicitor and third parties and even includes material of non-communicative nature.”

Un peu plus bas, une phrase plus loin:

“Litigation privilege, on the other hand, applies only in the context of litigation itself.”

Et dans le prochain paragraphe qui est cité, à la troisième phrase:

“Its purpose is more particularly related to the needs of the adversarial trial process. Litigation privilege is based upon the need for a protected area to facilitate investigation and preparation of a case for trial by the adversarial advocate.”

Très important. Ça c'est le principe de «litigation privilege». Ensuite, dans la même décision de la Cour suprême, je peux vous amener à la page 17 de cette décision, le paragraphe 32:

“Unlike the solicitor/client privilege, the litigation privilege arises and operates even in the absence of a solicitor/client relationship and it applies indiscriminately to all litigants, whether or not they are represented by counsel.”

...et cetera,

5 "A self-represented litigant is no less in need of, and therefore entitled to a zone or chamber of privacy. Another important distinction leads to the same conclusion. Confidentiality in the sine qua non - the sine qua non of the solicitor/client privilege, is not an essential component of the litigation privilege. In preparing for trial, lawyers, as a matter of course, obtain information from third parties who have no need nor any expectation of confidentiality, yet the litigation privilege attaches nonetheless."

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Voilà le principe de «litigation privilege» tel qu'énoncé par la Cour Suprême du Canada.

15 Maintenant, j'aimerais regarder comment ce principe a été appliqué à cette Cour, parce qu'il y a une décision très importante qui montre comment il a été appliquée et je veux donc aller à l'onglet 10 de mon livre des autorités et ça c'est une - c'est la

20 décision Mamaka (ph) qui date de 2007, dans cette même Cour. Elle est très intéressante. Je vais vous amener à la page 6 de cette décision-là. Le paragraphe 11 dit...

MR. DEARDEN: Sorry, where are you?

25 M. RANCOURT: Je suis à la page 6...

MR. DEARDEN: Of what tab?

M. RANCOURT: ...de l'onglet numéro 10. Est-ce que j'ai dit autre chose qu'onglet 10? Je m'excuse si c'est le cas.

30 LE TRIBUNAL: Non, non. Continuez là.

M. RANCOURT: Okay. Donc, à la page 6 au paragraphe 11:

"Litigation privilege, when properly asserted, will shield an insurer's claim..."

Bon c'est un cas à propos de l'assurance,

...file from disclosure despite the fact that the documents therein are highly relevant to the plaintiff's bad faith claim. It is not correct that in the Ontario context a plaintiff's need for disclosure of the claim's file in a bad faith claim is overwhelming. Specifically, the relevance or importance of the information to a plaintiff seeking to prove bad faith does not overwhelm litigation privilege. It is the opposite, as Blair, J. held in Day (ph) v. Supra (ph). Litigation privilege overwhelms or trumps relevance in most cases, even if that deprives the plaintiff of necessary proof."

Très clair. Ensuite, je reste dans cette autorité. Je vais à la page 8 de cette même autorité, Mamaka (ph).

LE TRIBUNAL: Oui.

M. RANCOURT: Et je suis à la page 8 et je vais au paragraphe 14:

"Where the party asserting litigation privilege has established that documents such as those in an insurer's claim file are subject to litigation privilege, that privilege must be respected with the result that the documents will not be disclosed despite their relevance and importance subject to this. A party seeking disclosure of those privileged documents bears the burden of establishing prima face actionable misconduct by the party which has established the privilege. If the party seeking disclosure of documents which are subject to litigation privilege makes a prima face showing of actionable misconduct by the party which established the privilege and that misconduct is in relation to the proceedings with respect to

which the litigation privilege was claimed, disclosure of the documents may be ordered despite the privilege an insurer's bad faith – an insurer's bad faith in the handling of its insured accident benefits claim is actionable misconduct."

Bon, ça c'est pour le cas précis, mais la chose importante ici, c'est que je dois établir qu'il y a un «litigation privilege», et pour établir ça, il y a quelque chose qui s'appelle «the dominant purpose test». Il suffit que je puisse convaincre le juge que la raison que j'ai communiquée avec madame Gervais, c'était en relation à préparer quelque chose dans cette action. Une fois que le juge accepte que je lui ai demandé, par exemple, de faire un affidavit parce que l'affidavit allait servir dans l'action, de toute évidence, une fois que ça n'est pas en question, j'ai établi qu'il y a un «litigation privilege» à ce moment-là et ça devient le fardeau de l'autre partie de surmonter ce «litigation privilege» et ils doivent le faire avec un test qui est très onéreux,

"A party seeking disclosure of those documents bears the burden of establishing prima facie actionable misconduct by the party which has established the privilege."

Donc, c'est quand même quelque chose d'assez fort qui protège les parties en litige.

Ensuite, si on va à la page 9 de cette décision, je vais au paragraphe 19 et,

5
"In general, accident assurance company delivered the majority of reasons in respect to litigation privilege at paragraph 3, 3(8), and 3 - 3(9). He described two different ways in which litigation privilege may be established as follows."

Premièrement,

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"Litigation privilege attached to communications, so long as such litigation was contemplated, the dominant purpose test was satisfied."

Ensuite, deuxièmement,

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"Subsequently, Carty (ph), J. noted new - new litigation was contemplated and then stated, "Any communications or reports after May 3rd whose dominant purpose was directed to the litigation now before us are protected by litigation privilege."

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Donc si les communications sont reliées au litige ou à un litige qu'on se propose de faire et que la raison principale de la communication est de parler de ce litige qu'on se propose de faire, tout ça est protégé par «litigation privilege». Et ces concepts-là n'ont même pas été considérés par le Juge Smith, alors que je les avais argumentés dans....

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LE TRIBUNAL: Est-ce que je vais trouver cet argument dans votre factum...

M. RANCOURT: Oui.

30
LE TRIBUNAL: ...par la Juge Smith?

M. RANCOURT: Oui, mon factum donne des détails de ce que je suis en train de dire aujourd'hui, oui. Y'a

sûrement des différences là, mais elles sont minimales. L'importance de la chose, je vais dire quelque chose - quelques - quelques énoncés sur l'importance de la chose, par rapport au «litigation privilege». La décision contestée équivaut, dans la façon qu'elle est écrite, à éliminer le «litigation privilege», pour les communications entre un parti et un affiant non parti. Avec le simple prétexte qu'il faut tester la crédibilité ou l'indépendance de l'affiant pour établir le poids de son affidavit. La décision est décrite comme si ce prétexte-là était suffisant, on n'a même pas besoin de considérer «litigation privilege», alors que les autorités nous disent qu'il faut le considérer, qu'il y a un «dominant purpose test», qu'il faut donner un regard très attentif à cette question de «litigation privilege». Il n'y a aucune mention de ça et ce n'est pas fait. Cela causerait ou pourrait causer un dommage préjudiciable, irréparable envers le défendant dans cette action de diffamation de 1 million de dollars. Et puis ça permettrait à d'autres d'aussi rejeter le principe fondamental de «litigation privilege» pour toute communication avec un affiant non-parti, ce qui est intenable. J'argumente que c'est intenable de permettre une telle chose.

Alors, ça va toucher cette idée qu'on peut aller tout chercher chez l'affiant pour attaquer sa crédibilité et sa partialité. Donc ça se rattache de cette façon-là.

Je voudrais, si y'a pas de question, j'aimerais passer au troisième et au dernier point de droit.

LE TRIBUNAL: Vous avez - Monsieur Rancourt, vous avez le choix à faire, vous avez une décision à faire. Nous pouvons - nous pouvons prendre la pause pour aller manger maintenant, avant de commencer cette troisième catégorie, ou vous pouvez commencer puis on pourra continuer pour un autre 5-6 minutes.

M. RANCOURT: Je préférerais prendre la pause tout de suite. C'est une bonne place pour m'arrêter.

LE TRIBUNAL: C'est parfait. Alors on va faire comme ça, mais avant de prendre cette pause là, j'ai besoin votre aide au sujet de votre motion aujourd'hui. Premièrement, je vais vous donner une feuille, je vais donner une feuille à vous et monsieur Dearden, avec - il y a - vous allez voir qu'il y a huit points mentionnés sur la feuille. Les deux premiers items viennent directement de l'article 62(2) des règles de procédure.

M. RANCOURT: Ah. Et je peux écrire sur cette feuille?

LE TRIBUNAL: Ah oui, oui. Oui, oui.

M. RANCOURT: Okay.

LE TRIBUNAL: Une - parce qu'il y a deux façons par la règle 62.02, puis deux façons pour obtenir une permission pour aller à la Cour Divisionnelle. Premièrement, c'est d'établir, conflicting decisions of other Courts - pour la décision - il y a - c'est - le point énuméré - c'est en erreur, okay? Les points énumérés 3 à 8, ça c'est simplement mon - un essai de ma part d'identifier vos arguments par sujet.

"Distinguish between cross-examination in trial versus cross-examination affidavit in motion. Not answerable, producible due to litigation privilege."

5

Alors le privilège de litige,

"Five, cannot order production of documents by non-party. And six...."

10

Et cetera. Comme j'ai dit, c'était un essai de ma part de préparer comme un sujet, bon argument - ça c'est un argument de monsieur Rancourt; ça c'est un autre argument; ça c'est un autre - une autre catégorie d'arguments.

15

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Alors, si j'ai raison - bien, je n'ai pas raison, mais si j'ai raison, il y a six catégories d'arguments que j'ai trouvés dans votre factum. Peut-être y'en a un autre là, mais je pense c'est....

20

M. RANCOURT: Monsieur le Juge, je lis rapidement et je pourrais signaler deux imprécisions qui pourraient nous causer des problèmes si on va utiliser ce document.

25

LE TRIBUNAL: Oui?

M. RANCOURT: Premièrement, au point numéro 5....

LE TRIBUNAL: Oui.

30

"Cannot order production of documents by a non-party."

Ce n'est pas qu'on ne peut pas le faire, c'est qu'il y a un test très onéreux pour le faire.

LE TRIBUNAL: Okay.

M. RANCOURT: Et il est décrit dans les règles.

LE TRIBUNAL: Okay.

M. RANCOURT: Okay? Et puis le numéro 7...

LE TRIBUNAL: Peut-être numéro 5 ça devrait être - ça devrait dire simplement,

"Production of documents by a non-party."

MR. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est le sujet.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay.

M. RANCOURT: D'accord.

LE TRIBUNAL: Alors...

M. RANCOURT: Et puis....

LE TRIBUNAL: ...la feuille - la feuille, c'est simplement

M. RANCOURT: Ah, okay.

LE TRIBUNAL: ...un essai de ma part d'identifier les sujets...

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: ...les catégories. Ça c'est pourquoi j'ai dit catégorie.

M. RANCOURT: Je vois une autre imprécision, si vous voulez que je vous la signale?

LE TRIBUNAL: D'accord.

M. RANCOURT: C'est le point 7.

LE TRIBUNAL: Oui.

MR. RANCOURT:

"Conflicts between affidavits of parties cannot be decided by a motion judge."

Non, ça ce n'est pas correct. Les conflits dans l'évidence peuvent être décidés, mais on ne peut pas décider des conflits dans l'évidence en faisant appel à la crédibilité pour donner moins de poids à un affidavit, mais évidemment, un juge en motion peut décider de croire une évidence plus que l'autre, d'après ces critères, mais pas en utilisant la crédibilité de la personne qui amène ces évidences-là. Vous voyez la distinction?

LE TRIBUNAL: Vis-à-vis de crédibilité.

M. RANCOURT: Uh-hmm. Exact.

LE TRIBUNAL: Okay. Puis le deuxième document que je vais vous donner, c'est simplement une photocopie de l'audition de la Juge Smith.

M. RANCOURT: Oui.

LE TRIBUNAL: Qui est devant nous aujourd'hui. Okay? Puis comme vous allez - comme vous savez, l'audition du Juge Smith qui est en question aujourd'hui, il y a chaque paragraphe énuméré, okay? Alors moi, pour faire une décision ici là, moi j'ai besoin de savoir - comme vous êtes en train de dire, écoutez, l'audition du Juge Smith, celui-là, le Juge Smith s'est trompée, okay? Mais moi comme juge de revue là et il faut sur la motion présentement, il faut que je trouve où est-ce que c'est l'erreur, okay?

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Mais je ne vais pas trouver ça - je ne veux pas essayer moi-même.

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: La responsabilité de dire: «Non, Monsieur le Juge, vous allez trouver cette erreur. C'est dans le paragraphe 16 ou 13», okay?

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Alors, moi je suis en train de vous demander de faire le travail suivant...

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: ...j'ai essayé, avec la première feuille, qu'on va mettre la première feuille parce que - comme pièce numéro 1 sur cette motion ici aujourd'hui là...

M. RANCOURT: Okay.

LE TRIBUNAL: ...puis...

M. RANCOURT: En anglais c'est exhibit?

THE COURT: Yes, it would be exhibit. Motion exhibit 1. Puis alors, je me demande - ma demande c'est la suivante: s'il vous plait, avant de - pour compléter votre argument en totalité, moi je veux sortir d'ici à la fin, quand la motion sera terminée, je veux savoir exactement votre position vis-à-vis quel paragraphe numéroté dans la décision du Juge Smith, sont en erreurs puis les catégories d'arguments que vous avez, parce que vous avez présenté plusieurs arguments, quel catégorie d'argument, quels arguments sont applicables à tel paragraphe que vous êtes en train de suggérer, ça, celui-là est en erreur. Je ne veux pas quitter dans mon bureau après puis deviner «Ah, monsieur Rancourt trouve que

le paragraphe tel, tel, tel, est en erreur». Je ne peux pas deviner ça. Je veux savoir exactement.

M. RANCOURT: Monsieur le Juge, je vais juste expliquer quelque chose avant qu'on parte.

LE TRIBUNAL: Oui.

M. RANCOURT: Beaucoup, si pas tout ce travail-là est dans mon factum, parce que dans mon factum, j'ai tenté de faire ça, mais je ne l'ai pas fait avant tant - de façon aussi complète que vous et je vais faire le devoir que vous me donnez et aussi, j'aimerais dire que - mais y'a beaucoup de ça dans mon factum.

LE TRIBUNAL: Probablement.

M. RANCOURT: Et puis aussi, y'aura des paragraphes où il y a plus d'un thème qui vont s'appliquer, évidemment.

LE TRIBUNAL: Absolument.

M. RANCOURT: Et y'a des paragraphes où rien ne va s'appliquer parce que c'est un commentaire ou quelque chose comme ça.

LE TRIBUNAL: Mais il y a, j'imagine, j'espère, il y a les paragraphes que vous n'êtes pas en train de mettre en question aujourd'hui. Par exemple, le paragraphe numéro 1....

M. RANCOURT: Bien sûr.

LE TRIBUNAL: Y'a aucune question comme ça.

M. RANCOURT: Non.

LE TRIBUNAL: Ça ce n'est pas une dispute là.

M. RANCOURT: Oui.

LE TRIBUNAL: Alors, c'est seulement les paragraphes qui sont en dispute...

M. RANCOURT: Oui.

LE TRIBUNAL: ...que vous êtes en train de suggérer.
Non, ça c'est - ça c'est une erreur légale.

M. RANCOURT: Okay.

LE TRIBUNAL: Puis vous avez dit «Ah non, je peux
l'exprimer dans une meilleure façon» et cetera,
etcetera. Non, non, non. Vis-à-vis la motion où -
quels sont les paragraphes que vous allez mettre -
vous êtes - vous êtes ici aujourd'hui en - puis vous
êtes en train de dire «Écoutez, j'ai besoin
permission de procéder devant la Cour Divisionnelle
à cause qu'il y a des erreurs là-dedans.

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Okay? Il y a les paragraphes qui sont
en erreur puis y'en a d'autres qui sont - qui - que
vous n'êtes pas - vous n'êtes pas en train de mettre
en question.

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Moi je veux savoir plus spécifiquement.
C'est tout.

M. RANCOURT: Oui, je comprends parfaitement,
Monsieur le Juge.

LE TRIBUNAL: On va trouver ça - tout ça dans un
document.

M. RANCOURT: Et donc, si je comprends bien...

LE TRIBUNAL: Oui.

M. RANCOURT: ...je vais utiliser les chiffres qui
sont ici dans exhibit 1...

LE TRIBUNAL: Oui.

M. RANCOURT: ...et je vais les écrire à côté des
paragraphes ici?

LE TRIBUNAL: Exactement.

M. RANCOURT: Okay.

LE TRIBUNAL: Merci.

M. RANCOURT: Et est-ce que vous vous attendez que je fasse ça à l'heure du lunch?

LE TRIBUNAL: Si possible.

M. RANCOURT: Okay. Je vais tenter de faire ça.

LE TRIBUNAL: Si c'est possible.

M. RANCOURT: Si...

LE TRIBUNAL: Sinon...

M. RANCOURT: ...je n'ai pas emmené tous mes documents avec moi...

LE TRIBUNAL: Sinon...

M. RANCOURT: ...alors peut-être qu'au retour je vais avoir besoin de quelques secondes de plus pour - en vérifiant un document ou....

LE TRIBUNAL: Oui, d'accord.

M. RANCOURT: Merci.

LE TRIBUNAL: On va ajourner. J'ai commencé ce matin en disant nous avons une demi-journée, mais tout ça pour dire à cause du devoir que j'ai demandé, on va arrêter maintenant jusqu'à 2h30, ça va nous donner une heure et demi puis pas une heure et quart.

M. RANCOURT: Est-ce qu'à 2h00 je peux rentrer dans la salle pour utiliser mes documents?

LE TRIBUNAL: Absolument.

M. RANCOURT: Okay. Donc la salle va être ouverte, débarrée?

LE TRIBUNAL: Hum...

M. RANCOURT: Parce que je sais qu'ils barrent la salle.

LE TRIBUNAL: Oui. Oui.

M. RANCOURT: Donc...

LE TRIBUNAL: Le monsieur ici, il va être à la porte à 2h00.

M. RANCOURT: Merci. Merci, c'est parfait. Merci.

MR. DEARDEN: Your Honour, can I just ask a question on time?

THE COURT: Sure. Yes.

MR. DEARDEN: You did indicate to Mr. Rancourt that he had an hour and a half. He, by my watch, took up almost an hour and a half. When we come back, what's happening at 2:30?

THE COURT: My presumption is that Mr. Rancourt's going to need another half an hour. That's going to take us until three o'clock. And my presumption is that you can present your argument in an hour and a half.

MR. DEARDEN: Oh, yes.

THE COURT: And my presumption then is - and that's going to be the reality - that Mr. Rancourt is then going to have 30 minutes of reply.

MR. DEARDEN: What about the second leave motion?

THE COURT: That's a good question. We're going to have to talk about it.

MR. DEARDEN: I only need 15 minutes to deal with that, Your Honour.

R E C E S S

[1:04 p.m.]

U P O N R E S U M I N G

[2:36 p.m.]

LE TRIBUNAL: Monsieur Rancourt.

M. RANCOURT: Bonjour, Monsieur le Juge. Bon après-midi, c'est-à-dire.

LE TRIBUNAL: Pareillement.

M. RANCOURT: Donc j'ai réussi à compléter cet exercice que vous m'aviez proposé. J'ai donc le document pour vous. J'imagine qu'on va faire des copies pour tout le monde?

LE TRIBUNAL: Qu'est-ce que ça veut dire «non»?

M. RANCOURT: «Note» - «no», ah c'est parce que ça, c'est un fait qui est décrit dans la décision que je conteste de fait que madame Gervais est un avocat et je fais référence à mon factum où dans un «foot note» j'explique...

LE TRIBUNAL: Ah.

M. RANCOURT: ...que ce n'est pas le cas.

LE TRIBUNAL: Okay. Un, deux - oui, deux copies, s'il vous plait.

GREFFIER DE LA COUR: Deux copies seulement?

LE TRIBUNAL: Trois copies.

GREFFIÈRE DE LA COUR: Trois copies.

LE TRIBUNAL: Merci. Okay.

M. RANCOURT: Merci. Donc j'étais rendu à la troisième - le troisième thème légal par rapport aux arguments légaux (sic). C'était sur toute la question de production de documents pour une personne qui est une non-partie à la cause. Et donc, la décision contestée exige qu'une non-partie produise des documents sans aucune mention des facteurs à considérer avant d'ordonner une telle production et en faisant fi d'une autorité déterminante de la Cour d'Appel et sans aucun mécanisme de protection contre un excès possible.

L'exemple le plus frappant de ces documents qui sont exigés - et ça, j'aimerais, Monsieur le Juge, que

vous tourniez votre attention à la nature des documents que je vais vous décrire - l'exemple le plus frappant, c'est un groupe de documents qui sont des documents en réponse à une demande d'accès à l'information qu'a fait l'affiante. Donc, l'affiante a fait une demande d'accès à l'information sous une Loi d'accès à l'information en Ontario qui s'applique aux Universités. Les parties, les deux parties ne connaissent pas la nature de cette demande. On ne connaît même pas quelle était la demande. On ne connaît pas la réponse de cette demande. On ne connaît pas le nombre de document. On ne connaît pas les thèmes des documents qui avaient été demandés. On sait rien, ni moi, ni la partie opposante. Une partie de ces documents-là a été rendue public par l'affiante, une partie de ces documents-là.

LE TRIBUNAL: Madame Gervais?

M. RANCOURT: Madame Gervais. Elle a rendu public ces documents en 2011. Suite à ça, j'ai utilisé ces documents rendus publics pour écrire mon blog qui est le blog central dans la cause de diffamation et donc, c'est ce sous groupe de ce groupe, peut-être grand des documents qui a été rendu public et qui est la base factuelle de mon - de ma défense «fair comment», parce que j'ai dit dans le blog - j'ai dit et ça c'est le paragraphe qui est le plus en litige - si j'avais à le dire en français, je dirais - j'ai dit la chose suivante, mais je l'ai dit en anglais: «Les documents d'accès à l'information suggèrent que la professeur St-Lewis a agit comme la - en anglais c'était «house negro» du président Allen Rock. Le

terme «house negro» a un sens politique bien défini et j'ai donné la définition dans le blog et ça c'est le cœur de l'action en diffamation.

5 Donc, ces documents d'accès d'information-là, la - les parties qui étaient publiquement accessibles et qui sont en évidence dans la Cour (sic) - dans la cause, c'est cette fraction des documents d'accès à l'information, sont en évidence devant nous dans la cause. Y'a - on ne conteste pas ces documents-là, 10 mais le - la plaignante a voulu avoir tous les documents, le groupe large des documents qui avaient été demandés par Mireille Gervais, sauf qu'on ne connaît même pas la nature de la demande et on ne connaît pas la nature de ces documents et ni le juge 15 et ni les parties ont vu ces documents qui sont demandés.

20 Alors, c'est un cas très grave où un juge ordonne un groupe de documents, on pourrait dire aveuglement sans qu'aucune partie sache c'est quoi, d'une personne, une affiante qui est une personne non-partie à la cause. Alors c'est - c'est....

25 LE TRIBUNAL: Mais vous êtes en train d'accepter qu'il y a une partie de ces documents qui est pertinente?

30 M. RANCOURT: Oui et elle est bien définie parce qu'elle a été rendue public et je cite ces documents publics-là dans mon article blog qui est l'article....

LE TRIBUNAL: Oui, mais si quelqu'un - si quelqu'un a une pile de documents comme ça...

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: ...okay, puis cette personne décide parmi tout ces documents-là, y'en a quelques-uns que moi je pense qui sont très, très, très importants, mais je veux aller chercher, puis j'ai obtenu toute une grosse pile de documents...

M. RANCOURT: Uh-hmm.

LE TRIBUNAL: ...puis après une revue de tous ces documents-là, oh wow, ça c'est très important - puis je décide à ce moment-là, bon, je vais déposer un affidavit ou j'accepte la demande que je dépose - que je signe un affidavit, puis j'ai fait référence à ces documents ou je sais pas, mais tout ça pour dire - non, non, mais vous êtes en train - vous avez déjà accepté qu'il y en a quelques-uns, y'a une partie de ces documents qui est pertinente que l'adversaire, la partie adverse peut demander que madame Gervais - non?

M. RANCOURT: Non, j'aimerais clarifier la situation. Excusez-moi, je vais clarifier encore. La partie - parce que les documents d'accès à l'information sont dans deux groupes: un groupe qui a été rendu public et tout le reste qu'on ne connaît pas. Bon. La partie qui a été rendue publique est pertinente dans la cause principale, mais n'est pas pertinente dans la motion, parce que l'affidavit de Mireille Gervais ne fait pas référence à ces documents-là, d'aucune façon. Vous voyez? C'était juste pour vous donner le contexte large. Le contexte large, c'est qu'il y a eu une demande d'accès à l'information.

5 Dans l'action, c'est vrai, une partie de ça a été rendu publique. Ça n'a pas été mis en évidence dans un affidavit. Ça simplement été rendu public. Je cite ces documents publics dans mon blog, donc, ça devient - ça fait partie donc des faits que j'utilise dans ma défense «fair comment» en diffamation. Ça, tout le monde est d'accord, mais là on est dans une motion autre où on ne fait pas du tout référence à ces documents. Ils ne sont pas pertinents dans la motion, mais la plaignante les veut parce qu'elle prétend que le point en litige dans la motion, que ces documents qu'on ne connaît pas, seraient pertinents à la mémoire ou à questionner la mémoire de l'affiante. Voilà la situation. Est-ce que ça aidé que j'ai - est-ce que ça répond à votre question?

20 Donc voilà la situation. Donc c'est une - nous pouvons voir ceci - où est-ce que j'étais - oh - ah, je me suis trompé avec quelque chose - okay. Donc, nous allons, pour comprendre un peu plus en détails, nous allons aller à l'onglet 4.2 de mon dossier de motion. C'est dans le tome 1 donc de mon dossier de motion.

25 LE TRIBUNAL: Oui.

M. RANCOURT: Nous allons aller à l'onglet 4.2 qui est la Charte des refus de la plaignante. Et si vous allez à la page...

30 LE TRIBUNAL: Oui.

M. RANCOURT: ...248 du dossier de motion, vous allez voir le début de la section qui parle de production de ces documents - ou non, ce n'est pas le début,

c'est dans le milieu, mais le début est à la page - excusez-moi - le début est à la page 246 et le thème dans la Charte de refus, c'est

5 "Access to SAC's data prior to November 25th, 2008."

"Access to SAC's data."

10 D'accord. Donc ça c'est la question (j) qui commence à la page 246. D'accord?

LE TRIBUNAL: Oui.

M. RANCOURT: Ensuite, à la page 248, la question 123.

LE TRIBUNAL: Excuse-moi, où?

15 M. RANCOURT: La page 248.

LE TRIBUNAL: Oui.

M. RANCOURT: On est dans le même document.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: Je vais à la question 123.

20 LE TRIBUNAL: Oui.

M. RANCOURT: Et la question 123 est:

25 "And I'm also asking you to produce, Ms. Gervais, the complete response that you received to your freedom of information request to the University of which you selected only to put in the documents that you see as exhibit 6 to this cross-examination. I'm asking you to do that. Will you do that, Ms. Gervais?"

30 Il dit pas pour en quoi, la question n'est pas claire, mais en fait, c'était rendre public sur l'internet. Ça n'avait pas à faire avec un litige quelconque.

Donc ça c'était la question 123. Ensuite, deux pages plus loin, à la page 250 dans le dossier de motion...

LE TRIBUNAL: Oui.

M. RANCOURT: ...à la question 131, la question est:

"I want you to produce the entire FEPA response you received from the University of Ottawa which is partially found at exhibit 6 to this cross-examination."

Donc la question est claire. C'est ça la question.

Et ensuite, je vais à l'onglet 2 pour regarder la décision du Juge Smith, je vais à l'onglet 2 de mon dossier de motion.

LE TRIBUNAL: Oui.

M. RANCOURT: Je vais voir la décision du Juge Smith par rapport à ses questions et je vais donc à la page 19 du dossier de motion, dans la décision du Juge Smith, n'est-ce pas?

LE TRIBUNAL: Paragraphe numéro?

M. RANCOURT: Paragraphe numéro 25 et le titre de ce paragraphe c'est:

"Issue J, access to SAC's data prior to November 25th, 2008."

Et là on parle des documents d'accès à l'information, et le paragraphe 25 dit:

"St. Lewis submits that these questions are relevant to the issue of the witness' recollection about a meeting with St. Lewis that took place four years ago. I find the series of questions are relevant to the witness'

recollection about events during the relevant time relating to facts deposed in her affidavit."

Et là vous voyez, on fait référence à la question 131 et cetera auxquelles je fais - donc, le juge ordonne que tous ces documents-là soient produits. Ça c'était la décision.

Maintenant, nous allons regarder les autorités pour montrer que cette décision basée sur des autorités citées par le juge, n'est pas compatible avec, par exemple, la Cour d'Appel de l'Ontario. Alors, nous passons à l'onglet 14, dans mon livre des autorités.

LE TRIBUNAL: Je l'ai.

M. RANCOURT: Pardon?

LE TRIBUNAL: Je l'ai.

M. RANCOURT: Merci. Donc l'onglet 14.

LE TRIBUNAL: Harold Ballard?

M. RANCOURT: Euh - j'ai pas compris.

LE TRIBUNAL: Harold Ballard. Dans la succession d'Harold Edwin Ballard?

M. RANCOURT: Bien je cherche ça dans le document, excusez-moi. Je suis à l'onglet 14.

LE TRIBUNAL: Moi aussi.

M. RANCOURT: «Court of Appeal» en haut de la page.

LE TRIBUNAL: Oui.

MR. RANCOURT:

"The Attorney General of Ontario and the public trustee v. Stavros (ph)."

LE TRIBUNAL: Oui.

M. RANCOURT: Est-ce qu'on - est-ce que je suis correct?

LE TRIBUNAL: Oui. Oui.

M. RANCOURT: Et puis donc, à l'onglet 14, je vais à la page 5 de cette décision. Et là, je m'excuse, les paragraphes ne sont pas numérotés, mais en bas de la page, le dernier paragraphe à la page 5....

THE COURT:

"We do not agree."?

MR. RANCOURT: Pardon?

THE COURT:

"We do not agree."?

MR. RANCOURT: Oui. Juste avant ça, le paragraphe en haut ça dit:

"The appellant submitted that if we concluded that the motion judge applied the wrong test in denying production, that we should vacate that order and require production."

Ensuite, il enchaîne dans le prochain paragraphe:

"We do not agree; an order requiring production should be made only after a full consideration of all the relevant factors."

Le Juge Smith ne parle pas des «relevant factors» qui sont établis dans la jurisprudence, aucunement. Et ça - là on parle de la Cour - la Cour d'Appel, n'est-ce pas? Et puis à la page 6, la prochaine page dans cette même décision...

LE TRIBUNAL: Oui.

M. RANCOURT: ...le deuxième paragraphe de la page 6:

"In making the fairness assessment required by rule 30.101b...."

Donc cette règle, c'est la règle qui détermine la production des documents pour une personne qui est non-partie, Monsieur le Juge, et cette règle, je l'ai mis à l'onglet 24 dans ce même livre. Donc la règle est là si vous voulez vous y référer:

"In making the fairness assessment required by rule 30.10, the motion judge must be guided by the policy underlying the discovery regime currently operating in Ontario. That regime provides the full - for full discovery of and production from parties to the litigation. It also imposes on-going disclosure obligations on both parties. Save in the circumstances specifically addressed by the rules, non-parties are immune from the potentially intrusive, costly, and time-consuming process of discovery and production. By its terms, rule 30.10 assumes that requiring a party to go to trial without the forced production of relevant documents in the hands of non-parties is not, per se, unfair."

D'accord?

LE TRIBUNAL: Oui.

M. RANCOURT: Ensuite, je vais à la page 8 de cette même autorité et je regarde le paragraphe du milieu de la page 8 de cette même autorité de la Cour d'Appel:

"In addressing these and any other relevant factors, some of which were identified by the

motion judge in his reasons, the motion judge will bear in mind that the appellants bear the burden of showing that it would be unfair to make them proceed to trial without production of the documents."

5 LE TRIBUNAL: Okay.

M. RANCOURT: Et ensuite, si on continue à lire:

10 "In our opinion, a consideration of some of these factors will require an examination of the documents, as contemplated by rule 30.10(3). That rule provides in part where the Court...

Et là je cite la règle ou il cite la règle,

15 "...where the Court is uncertain of the relevancy of or necessity for discovery of the documents, the Court may inspect the documents and determine the issue."

Ça ce sont les guides et les impositions de la Cour d'Appel par rapport à de telles productions.

LE TRIBUNAL: Okay.

20 M. RANCOURT: En plus, la jurisprudence prévoit qu'un examen sur affidavit ne peut pas substituer une règle dans les règles des procédures civiles. Et là, je vous amène à l'onglet 13 dans mon livre des autorités et c'est la décision «Ontario v. Rothmans» qui est une décision très citée par rapport au refus et je vais à la page 33 de cette décision-là et je vais au paragraphe 143 de «Ontario v. Rothmans» - je suis toujours à l'onglet 13 - et là y'a - vous voyez - en anglais on dit des «bullets» - et dans le
25
30 paragraphe 143, il est en train de résumer la Loi sur les refus dans les motions et il dit la chose suivante:

"A cross-examination is not a substitute for examinations for discovery or for the production of documents available under the rules of civil procedure."

Et il cite des autorités par rapport à ça. Donc ça, c'est quelque chose qui est accepté, établi dans la jurisprudence.

Ensuite, en plus - et ça c'est important, Monsieur le Juge, là j'ai cité la Loi, mais en plus, exactement les mêmes documents, Monsieur le Juge, ont été demandés par la plaignante dans l'examen au préalable et y'a eu une décision qui n'a pas donné accès à ces documents, à la plaignante. Alors j'aimerais vous amener à ça. C'est à l'onglet 21 dans le livre des autorités.

LE TRIBUNAL: Oui.

M. RANCOURT: Et je vais aux paragraphes 23 et 24 de cette décision. Et ça, c'est une décision, vous voyez, c'est le Juge Smith, une décision, ça s'intitule:

"Reasons for decision on Ms. St. Lewis' discovery refusals motion."

Qui est datée du 26 novembre 2012. À la section - aux paragraphes 23 et 24, d'abord la section est intitulée,

"Section B, SAC's freedom of information documents."

Paragraph 23,

"Question 698 is a request for the complete response received by Mireille Gervais to her freedom of information request produced at production number 60. Rancourt has answered this question by stating that he does not have any of these documents in his possession."

Paragraph 24,

"Questions 707 and 713 are similar to question 698. Rancourt has answered that he does not have any of these documents in his possession."

Et donc, la plaignante....

MR. DEARDEN: Your Honour, if I could get a translation clarification, please?

THE COURT: Yes.

MR. DEARDEN: I may have misheard the translation. I thought that Mr. Rancourt submitted to you that Justice Smith refused to order the production of these freedom of the information documents which is not what he - if that is - if I...

MR. RANCOURT: Non.

MR. DEARDEN: ...heard that right....

MR. RANCOURT: Non.

MR. DEARDEN: Okay, what did you say, please?

M. RANCOURT: J'ai dit plus précisément, que la décision n'avait pas accordé les documents, n'avait pas ordonné qu'ils soient produits.

MR. DEARDEN: No, the decision is you don't have them.

M. RANCOURT: C'est ca.

MR. DEARDEN: That's quite different than Justice Smith making an order that they not be produced.

M. RANCOURT: Oui, je suis d'accord. Merci, Monsieur Dearden. Alors donc, donc, la plaignante cherche à contourner cette décision du Juge Smith avec sa question.

LE TRIBUNAL: Non, il est - il a essayé d'obtenir les mêmes documents par quelqu'un d'autre.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est tout.

M. RANCOURT: Oui.

LE TRIBUNAL: Mais ce n'est pas - y'a pas de contradiction entre les deux. Il a essayé - il a essayé avec vous...

M. RANCOURT: Oui.

LE TRIBUNAL: ...puis après ça, il a essayé avec madame Gervais.

M. RANCOURT: D'accord. Mais je voulais montrer que c'est quand même des documents spécifiquement qui ont été - qui sont reliés aux découvertes et ça s'attache à cette jurisprudence qui dit qu'on ne peut pas substituer pour des découvertes.

Alors, l'importance de cette - l'importance des critères et des règles par rapport à la production de personnes qui ne sont pas des parties, si - si la décision contestée tient, alors ça ouvre la porte grande à toute production sans limite et sans protection pour tout document qui «pourrait vérifier la mémoire d'un affiant». Ça ouvre grande cette porte. Et ça - et dans la décision du Juge Smith, on ouvre cette porte sans mentionner et sans

attribuer le fardeau de la preuve à l'autre partie qu'ils ont, d'après la Cour d'Appel, pour démontrer qu'ils souffriraient de façon disproportionnée si on ne leur donne pas ces documents. Il n'y a eu aucune détermination de ce type là. Il n'y a eu aucune mention de la décision de la Cour d'Appel qui impose ces facteurs-là qui sont à considérer. C'est une décision qui simplement dit: voilà, c'est pertinent aux souvenirs de madame, donc vous devez produire tous ces documents que je n'ai jamais vu, qu'on ne sait pas c'est quoi et comme ça. Et donc, cette production pourrait aussi causer un dommage préjudiciable irréparable contre le défendant dans cette action d'un million de dollars. Ça, ce sont les raisons que c'est important.

Alors en conclusion - et là j'ai essentiellement fini ma présentation, Monsieur le Juge....

LE TRIBUNAL: Comment - comment est-ce que - comment est-ce que la production de ces documents que madame Gervais a obtenus de l'Université, comment est-ce que ça va produit - comment est-ce que ça produire un résultat négatif pour vous, dans la cause?

M. RANCOURT: Oh, parce que je ne sais pas - j'ai dit «pourrait» causer un préjudice.

LE TRIBUNAL: Oh oui, mais le soleil peut tomber demain là aussi, ça c'est....

M. RANCOURT: Non, mais je veux dire, personne ne sait c'est quoi ces documents-là. Alors s'ils sont ordonnés de façon qui n'est pas consistante avec la jurisprudence et que ça s'avère qu'ils n'auraient pas dû être ordonnés mais que ces documents-là me

nuisent d'une façon ou d'une autre que je ne peux pas prédire, alors à ce moment-là y'a un dommage, y'a un préjudice.

Je pense que le Juge Smith avait un devoir d'au moins examiner les documents, d'après la jurisprudence que je vous ai présentée de la Cour d'Appel.

Donc en conclusion, et là je conclus pour le tout - alors en conclusion...

LE TRIBUNAL: Oui.

M. RANCOURT: ...la décision contestée sur tous ces points sauf un point dans ce que je vous ai donné que j'ai trouvé qui n'était pas contre des autorités liantes, il y avait l'issue (i) - le paragraphe 24 est le seul paragraphe qui n'est pas de façon importante affecté par mes arguments. Tous les autres - donc, la décision contestée sur tous, essentiellement tous ces points, est contre les autorités liantes et de la Cour d'Appel et de la Cour Divisionnelle et contre une saine pratique du droit. Elle causerait un dommage de recul dans l'administration juste des motions procédurales et dans le traitement des affiants parce que - est-ce qu'il y a quelque chose que....

LE TRIBUNAL: Non, je viens de noter pour la première fois quand j'ai dit s'il vous plait indiquer quels - quels de vos arguments sont applicables vis-à-vis tel paragraphe de la décision du Juge Smith...

M. RANCOURT: Oui.

LE TRIBUNAL: ...que - un, deux, trois, quatre, cinq, six, sept - un, deux, trois, quatre, cinq, six - un deux, trois, quatre, cinq, six, sept - que c'était un essai de ma part de - en tout cas.

M. RANCOURT: Mais....

LE TRIBUNAL: Ça dit - ça dit qu'est-ce que ça dit.

M. RANCOURT: Oui.

LE TRIBUNAL: Oui.

M. RANCOURT: Oui.

LE TRIBUNAL: Continuez.

M. RANCOURT: Donc, j'ai fait du mieux que je pouvais, Monsieur le Juge, je crois honnêtement que c'est la meilleure réponse que je pouvais donner. Donc ça causerait un dommage de recul. Si cette décision tient, dans les mains d'un avocat habile comme monsieur Dearden, il va pouvoir - il et d'autres vont pouvoir venir et obtenir tout ce genre de choses, contester en profondeur la crédibilité et la partialité d'un témoin affiant dans une motion, aller chercher tous les documents qu'ils veulent et faire fi complètement du privilège «litigation privilege». C'est - c'est - c'est la façon qu'est écrite cette décision et ça va causer un dommage de recul dans cette administration des motions procédurales. Puis aussi, elle pourrait causer un dommage préjudiciable irréparable aux défendants dans cette action.

LE TRIBUNAL: Merci. Mr. Registrar, do you have any other copies of this decision of Judge Smith?

REGISTRAR OF THE COURT: I gave one to Mr. Rancourt and tow to Mr. Dearden.

THE COURT: Okay. And so we'll take one back from Mr. Dearden, perhaps...

MR. DEARDEN: Sure. Thank you, Sir.

THE COURT: ...which will be for me, and the original - so what the court is referring to is the decision of Judge Smith under review on this motion, with the additions thereto, in hand, by Mr. Rancourt. So the original of that will be filed as exhibit 2 on this motion and the numbers added to exhibit 2 are contained in exhibit 1 on this motion.

EXHIBIT NUMBER 2: Decision of Judge Smith - produced and marked.

THE COURT: Okay, so this is exhibit 2 and Mr. Dearden.

SUBMISSIONS BY MR. DEARDEN:

Your Honour, I'm going to outline my argument. I'm going to briefly touch on the onus that Mr. Rancourt faces in getting leave to appeal to the Divisional Court under rule 62.02(4). My second point of argument will be again, to briefly take you to the affidavit evidence of Mireille Gervais and in particular the purpose of that affidavit, which in my submission, Your Honour, is solely to attack the credibility of Professor St. Lewis, which not only makes the credibility of Ms. Gervais' affidavit evidence relevant, I submit to you it is the issue. Credibility is the issue because the Gervais affidavit is being used by Mr. Rancourt solely for the purpose of attacking the testimony that Professor St. Lewis gave in her examination for discovery, which he has incredibly referred to as

5 "false sworn statements". I say incredibly, not out
of exaggeration, but because in a libel action the
conduct of a defendant is relevant until the verdict
is rendered and he is accusing an officer of the
Court, a lawyer, and a law Professor of repeatedly
making false sworn statements and his basis for that
is the Gervais affidavit. So I'll deal with that
and then take you to the scope of cross-examinations
10 of deponents of affidavits, Your Honour, in
interlocutory motions, as opposed to applications
under rule 14.05.

15 The submissions you heard about the R. v. Moyle
decision of the Divisional Court and other decisions
were decisions dealing with applications, which the
rule limits. You can't have contested facts or
you've got to go to trial. That's what R. v. Moyle
was about, but on interlocutory motions, credibility
is always allowed on cross-examinations - questions
20 about credibility are always allowed on
interlocutory motions...

MR. RANCOURT: Monsieur le juge, j'aimerais faire une
objection.

MR. DEARDEN: ...as opposed to applications.

25 LE TRIBUNAL: Monsieur Rancourt, vous avez eu
depuis...

M. RANCOURT: Oui.

30 LE TRIBUNAL: ...10h30 ce matin, vous avez eu Presque
sans interruptions de la part de maître Dearden,
maintenant c'est son tour. Donc, assoyez-vous.

M. RANCOURT: Merci.

LE TRIBUNAL: Ca c'est la raison pour réplique.
Alors faire des notes puis - vous allez présenter la
réplique plus tard.

5 MR. DEARDEN: So Your Honour, my third point was
scope of cross-examinations of deponents of
affidavits that are filed in support of
interlocutory motions. And the interlocutory motion
that we're talking about here is Mr. Rancourt wants
to re-examine Professor St. Lewis about the date she
10 met Ms. Gervais. Gervais has one recollection,
Professor St. Lewis has another. You can challenge
the credibility, the bias, the partisanship, the
lack of independence of a deponent of an affidavit
in those circumstances. It's almost trite to be
15 saying that.

The fourth point, Your Honour, litigation privilege,
which is a very narrow privilege and it only creates
a zone of privacy over pending litigation - over
20 pending litigation. Your Honour, the litigation
isn't pending; he filed the affidavit of M.s Gervais
to support his motion to re-examine Professor St.
Lewis. That's the litigation we're talking about
here - that's the context we're talking about here,
25 so there is no litigation privilege; he filed that
evidence and opened her up to cross-examination that
Judge Smith has ordered her to answer the questions
that are in play here.

30 And the last point, Your Honour, I have to deal with
is this third party production. The rule 30.10
point that was just made by Mr. Rancourt, it's a

total red herring. There's no rule 34.10 (sic) motion in play here. Once a deponent of an affidavit swears that affidavit in support of a motion, of course there can be production orders made arising out of the affidavit. Rule 30.10 is a complete red herring, in my submission.

So those are the five points I'll deal with, Your Honour. And to do it quickly, I've prepared a compendium of argument law and a compendium of argument evidence.

So Your Honour, dealing with the rule 62.02(4) test for leave to appeal an interlocutory order to the Divisional Court. I've set out, in tab 1 of the compendium, that rule. There has to be a conflicting - that's the compendium of law - there has to be a conflicting decision by another judge or Court in Ontario or elsewhere on a matter involving the proposed appeal and it's the opinion of the judge hearing the motion, desirable that leave be granted. Or the second branch is there appears, to the judge hearing the motion, good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that in his or her opinion leave should be granted. And Your Honour, if you could make a note, I deal with this test in the factum at paragraphs 21 to 27. And if Your Honour could turn to tab 3 of the compendium of law, which it should be the Bell Expressvu decision of Justice Bellamy, deals with how onerous this test is.

THE COURT: Tab 3?

MR. DEARDEN: Tab 3 of the law and you should have Bell Expressvu.

THE COURT: Yes.

MR. DEARDEN: So paragraph one, Justice Bellamy states that,

"The test for granting leave to appeal to the Divisional Court from this interlocutory order is an onerous one."

It's an onerous test.

The R. v. Brownhall decision that you'll find at tab 4 of the compendium, Your Honour, deals with what the conflicting decision branch of the rule 62.02(4)(a) test requires. You'll see in paragraph 27 of tab 4 of that compendium, in order to satisfy the conflicting decision requirement of rule 62.02(4)(a),

"It is necessary to demonstrate a difference in the principle chosen as a guide to the exercise of such discretion."

And the second branch of the test, if you go back to Bell Expressvu decision of tab 3, Your Honour, Justice Bellamy, in paragraph three, holds that,

"That appeal didn't raise matters that are of general importance. The decision is essentially a factual one. The issues raised in it are presumably of importance to the parties, although I must confess to being surprised that the defendants waited a year for the Anton pillar order was executed to even bring their

motion. In any event, the issues raised lacked general legal importance, they did not transcend the immediate interests of the specific facts of the case, they did not raise issues of general or public interest, and in the final analysis, they have very little juris prudential value."

I submit, Your Honour, that in this, what I'm going to call a refusals motion within a refusals motion, the highest that Mr. Rancourt could put to this Court is that the issues he's raised are of interest to the parties. There is no issue of general importance; it's simply Mr. Rancourt's disagreement with the orders that Justice Smith made on December 7th about what questions should be answered.

He kept on telling you he would be prejudiced. He did it this morning, he did a few minutes ago. That he would be prejudiced, but that, to me, is an admission that the importance of his leave motion is simply to him. He has no evidence that any - there's going to be any effect of Judge Smith's order that's going to be something that transcends into the matter of general importance that is required by the second branch of the test. There's no evidence that affiants may not come forth if they think they can be cross-examined the way Justice Smith has ordered them - Ms. Gervais can be cross-examined. It's pure speculation. There's no evidence in the record of that at all.

So moving to the second point, Your Honour, that's the backdrop about what the onerous burden is on Mr. Rancourt to get leave. What does he want to use Ms.

5 Gervais' affidavit for? What's the purpose of that affidavit? And I'd ask Your Honour to turn to the compendium that has the evidence in it. So tab 3, Your Honour, is the Gervais affidavit and I'm only noting paragraph four of that affidavit. Ms. Gervais swears in tab four of her affidavit, at tab 3 of the compendium,

10 "This affidavit is in support of the defendant's, Denis Rancourt, refusals and productions motion for discovery."

She's supporting this refusals and production motion of Mr. Rancourt. Now, if you turn to tab 4 of the compendium, Your Honour....

15 THE COURT: For discovery? Oh, okay...

MR. DEARDEN: Yes.

THE COURT: ...no, there was discovery.

MR. DEARDEN: Yes, that's the refusals motion within a refusals motion. He's filed her affidavit as part of his refusals motion on Professor St. Lewis examination for discovery. I brought a refusals motion to make her answer questions.

20 THE COURT: But this is not because there were refusal motions that came out of - there were refusal motions made by each party flowing out of discovery and then the Gervais - and it's on that motion brought by the defendant, right...

25 MR. DEARDEN: Fro an order....

THE COURT: ...in which he files the Gervais....

30 MR. DEARDEN: Yes, so he can get an order to re-examine Professor St. Lewis on discovery on the date he met - or she met Gervais. So you have - so

that's what she says point blank about why she's filed this affidavit.

Now, Mr. Rancourt's a little more blunt. If you look at tab 4 of the compendium, it is an October 24th, 2012 factum that Mr. Rancourt filed opposing the plaintiff's motion to compel Ms. Gervais to answer the questions on cross that she refused to answer. And you'll see the purpose at paragraph three of tab 4 of the compendium of evidence. It's page....

THE COURT: So this is the factum - this is the defendant's factum used before Justice Smith...

MR. DEARDEN: Yes.

THE COURT: ...which produced this order.

MR. DEARDEN: Yes. And you'll see, Your Honour, it's page 301 of Mr. Rancourt's motion record.

THE COURT: Yes.

MR. DEARDEN: At paragraph three, as part of his motion record for his discovery refusals motion,

"The defendant filed an affidavit of Mireille Gervais sworn July 9, 2012. The purpose of the said affidavit is to establish that the plaintiff made false sworn statements on May 1, 2012 and in her statement of claim in order to support the defendant's request for an order that the plaintiff be re-examined."

And if you turn to the next page, Your Honour, I've reproduced paragraph 24 of that factum. He ratchets it up a bit by saying that,

5
"The sworn and hard exhibit evidence of the defendant's affiant, Mireille Gervais, shows that the plaintiff repeatedly made false sworn statements on May 1st regarding a meeting which the plaintiff incorrectly alleges took place between the plaintiff and Ms. Gervais."

10
Your Honour, an accusation of false sworn statements is another way of saying - completely putting in issue the credibility of Professor St. Lewis in his motion. That's the purpose - is a full frontal assault on the credibility of the testimony that Professor St. Lewis gave during her examination for discovery when she was under oath.

15
THE COURT: So you're saying that's the purpose - that's the underlying purpose - that's - underlying, the stated purpose.

MR. DEARDEN: Yes.

THE COURT: For the reason of - for - the reason for the affidavit.

20
MR. DEARDEN: And then he admits it at tab 5 of the compendium, Your Honour. Tab 5 is Mr. Rancourt's written submissions on the refusals motion before Justice Smith and he's now seeking leave to appeal.

THE COURT: So at tab 4 was filed...

MR. DEARDEN: Before....

25
THE COURT: ...argument and on argument judge Smith said, "We'll deal with this on written submission."

MR. DEARDEN: You can - now, he said, "You can also file further written submissions."...

THE COURT: Oh, is that what he said? Good.

30
MR. DEARDEN: ...which is what he did. So he gave him an opportunity to file further written

submissions which we see at tab 5. So he did that on November 9th, 2012.

THE COURT: Okay.

MR. DEARDEN: If you turn to tab 5 of the evidence compendium, Your Honour, and look for page 324.

THE COURT: Got it.

MR. DEARDEN: So it's part of paragraph 18, but it's found on page 324 - the bullet in the middle of the page that has the bold type.

THE COURT:

"The plaintiff's pleadings."?

MR. DEARDEN:

"The plaintiff's pleadings, statements, and sworn testimony about a meeting she had with SAC staff in November 2008 before she finalized her evaluation report of the SAC report is in contradiction to the affidavit evidence of Mireille Gervais."

Contradiction - contradictory evidence. And paragraph 22, if you flip the page, Your Honour - so page 325 of the record - of Mr. Rancourt's record, paragraph 22,

"Whereas it is true that the credibility of the plaintiff's pleadings and of the plaintiff's evidence provided in discovery is impacted by the affiant's evidence, this does not alter the R. v. Caputo test for proper questions on cross-examinations of an affiant in a motion."

So he admits that it's true that the credibility of Professor St. Lewis' pleadings and testimony on

discovery is impacted by Mireille Gervais' evidence. It's a pure credibility motion that he's bringing to re-examine Professor St. Lewis.

THE COURT: Well, that's his motion to get access to the plaintiff - or further examine the plaintiff.

MR. DEARDEN: Yes.

THE COURT: And it's driven by credibility, that's your submission?

MR. DEARDEN: But he actually admits it.

THE COURT: And he admits it. And that's not the motion that gave rise to this issue. The motion that gave rise to - sorry, to this decision is your motion to access Gervais. Maybe I'm making a distinction without a difference, but they're two different motions, so when I asked you and I said now, is this - these factums - these two factums that you've taken me to...

MR. DEARDEN: Yes.

THE COURT: ...at 3 and 4, is this - are these factums filed on the motion to get further access to the plaintiff or to Ms. Gervais?

MR. DEARDEN: These motions - these factums in written - the factum in the written submission of Mr. Rancourt that I just took you through were filed to oppose my motion to make Ms. Gervais answer all the questions she refused to answer on cross-examination.

THE COURT: So it's to oppose further access to Gervais?

MR. DEARDEN: Yes, yes, which is the December 7th decision that he lost. And so what makes, in my submission, the Gervais affidavit not only the cross

5 about her credibility – the credibility of the
affidavit evidence that she's put in her affidavit,
it makes it the issue, is that Mr. Rancourt has
admitted the purpose he put that affidavit in and as
you see in paragraph 22 for instance, it's true that
the credibility of the plaintiff's pleadings and the
plaintiff's evidence is impacted by Gervais'
evidence. But credibility is the issue, Your
Honour. It's the issue for her – for Ms. Gervais'
10 affidavit.

THE COURT: Or – yes, or expressed in a different
way, what you're saying is you've taken me to
admissions by the defendant that he admits that is
the sole purpose to the Gervais evidence.

15 MR. DEARDEN: Yes.

THE COURT: To the Gervais affidavit.

MR. DEARDEN: Yes, and my submission is judge....

THE COURT: It's to call into question the
plaintiff's credibility.

20 MR. DEARDEN: Yes. So this is a credibility attack
and my submission is judge Smith made absolutely to
errors in ordering Ms. Gervais to answer questions
about her bias, her lack of independence – and I'm
going to take you to what he actually found. He
25 didn't just – he never found that it was solely for
credibility – bias, lack of independence, Ms.
Gervais has an axe to grind against Professor St.
Lewis who criticized her report – the Sac report.
Ms. Gervais' working with Mr. Rancourt to assist him
30 in defending this libel action. So when you do
that, judge Smith didn't make any errors whatsoever
in ordering her to answer my questions about how

close her relationship is with Mr. Rancourt, what she's been doing with Mr. Rancourt to assist in the defence of this libel action, and the other questions it's obviously not going to go through.

Then Your Honour, while I'm on the evidence, you know, Mr. Rancourt, if you'd just put in a silo the submissions he made to you about Mr. Gervais as if she's some, you know, stranger to this libel action and some third party who is going to be compelled to answer questions and produce documents, I ask you to turn to tab 13 of the compendium, which is exhibit 7 to Ms. Gervais' cross-examination.

THE COURT: Tab 13 evidence?

MR. DEARDEN: Of the evidence, yes. It's an e-mail exchange between Ms. Gervais and Mr. Rancourt and you'll see that, if you look at the bottom of this e-mail on February 11th, 2011 at 4:39, Ms. Gervais e-mails a link to Mr. Rancourt which is the article that she posted about Joanne St. Lewis not being independent in doing her report, but Mr. Rancourt's response is he's crying with joy that, "This is the most best (sic) X-mas present I ever got. I love you. Denis." Okay, so he and Ms. Gervais, on - and the significance, Your Honour, of February 11, 2011 is that's the date that Mr. Rancourt published his house negro article about Professor St. Lewis that he's suing for.

THE COURT: But in fairness, Mr. Dearden, I don't know what these documents are that Gervais is sending Rancourt, do I?

MR. DEARDEN: On this link, you don't know from that.

THE COURT: No.

MR. DEARDEN: Well, you do know is (sic) that whatever she sent Mr. Rancourt's crying with joy, it's the best X-mas present he ever got. "I love you. Denis."

THE COURT: Made him pretty happy.

MR. DEARDEN: It made him pretty happy. So it's not - she's not some stranger to Mr. Rancourt and a third party that might be, you know, brought in unwillingly to somebody else's litigation. Those two are pretty close.

THE COURT: Okay.

MR. DEARDEN: And in terms of this lawsuit and the assistance Ms. Gervais provided to Mr. Rancourt before she filed this affidavit, Your Honour, turn to tab 10, please of the evidence compendium where you should have a November 3rd, 2011 e-mail from Ms. Gervais to Denis, signed Mireille, and she says,

"The lawsuit that has arisen against you has brought my attention back to Joanne St. Lewis evaluation of the 2008 SAC report on systemic racism. I had not re-read the evaluation since 2008 and was reminded of why it deterred my resolve and was successful in silencing me. The SA report was portrayed in such a negative light that it completely minimized the pain and suffering experienced by my students. Regardless, I was also reminded of factual mistakes in Joanne St. Lewis' evaluation. I thought that this might be of interest to you since you have been following the case since the beginning."

And then she has her comments to assist Mr. Rancourt in defending this action - this libel action. So

5 he's disclosed - speaking of litigation privilege -
he's disclosed communications with Ms. Gervais that
deal specifically with the defence of this libel
action. He disclosed the communication, "I'm crying
with joy.", and he got his best X-mas present ever
as well, but he comes here today and says, "Oh, no,
there's a, you know, zone of privacy." Well, that
disappeared when he filed Ms. Gervais' affidavit and
when he produced exhibits like I've just taken you
10 through.

15 So Your Honour, my next point deals with the scope
of cross-examination of deponents of affidavits in
interlocutory motions as opposed to applications.
And I deal with this in my factum if you wish to
make a note, at paragraphs 29 to 34.

20 And I'd ask Your Honour now to have the compendium
of law because I'm going to take you to the cases
that clearly hold that a deponent of an affidavit in
an interlocutory motions can be cross-examined to
test their bias, their partisanship, their
credibility, the reliability of their evidence. And
I'm going to start with tab 5, Your Honour, which is
the decision of Justice Peril (ph) in the R. v.
25 Rothmans case. So tab 5 of the law compendium, you
should have R. v. Rothmans there, paragraph 143.
THE COURT: Rothwell, yes - R. v. Rothmans.
MR. DEARDEN: R. v. Rothmans. So Justice Peril (ph)
30 holds, in paragraph 143 in the....

"The case law has developed the following principles about the scope of the cross-examination of a deponent for an application or motion."

And then look at the bottom bullet, Your Honour.

"The questions must be relevant to the issues on the particular application or motion, B, the matters raised in the affidavit by the deponent, even if those issues are irrelevant to the application or motion, C, the credibility and reliability of the deponent's evidence."

"The credibility and reliability of the deponent's evidence."

Coburn v. City of Toronto decision, tab 6. Coburn v. City of Toronto, paragraph 11,

"When dealing with the cross-examination on an affidavit tendered for a motion, the context will be that motion, thus a deponent be - can be cross-examined on issues that they're semblance of relevance to matters raised by that motion."

Let me stop there, Your Honour, okay? The context will be the motion. The context that we have with Gervais' affidavit is to attack the credibility of Professor St. Lewis. She has, according to Mr. Rancourt, made repeated false sworn statements and he wants to re-examine her about that. That's the context and deponent can be cross....

THE COURT: But - sorry to interrupt, but remind me again why the credibility of the plaintiff is relevant on your client's motion to examine Gervais again?

5 MR. DEARDEN: Well, I want to - the reason I want
answers to these questions is to submit to Justice
Smith, when he does deal with this request to re-
examine Professor St. Lewis, that one - one, this
isn't - he doesn't have a right to put in a witness'
evidence, like Ms. Gervais, to contradict something
that was said during the examination for discovery.
That's for trial. That's the primary argument, but
two, that if the Court's going to consider this
10 affidavit, which is the only evidence, Your Honour -
the Gervais affidavit is the only evidence that Mr.
Rancourt put in to get an order to re-examine
Professor St. Lewis about the date she met Ms.
Gervais - it's the only evidence. And I want to
15 argue to the Court, after I've completed my cross-
examination, that this witness is so biased, so
partisan, has no independence, has an axe to grind,
that zero weight should be given to her affidavit
evidence that she says she never met Ms. Gervais.

20 THE COURT: So it's your theory that the Gervais
evidence - sorry, that the Gervais affidavit was
filed not just to oppose further examination of Ms.
Gervais, but to bolster the defendant's motion to
re-examine the plaintiff?

25 MR. DEARDEN: Your Honour, the Gervais affidavit was
put in solely - solely to support Mr. Rancourt's
request to re-examine Professor St. Lewis on the
date that those two met. Okay, that's the only....

THE COURT: But it's not filed on that motion.

30 MR. DEARDEN: Yes.

THE COURT: Or is it?

MR. DEARDEN: Yes.

THE COURT: Is it filed on both motions?

MR. DEARDEN: Well, it's in his refusals motion on the examination for discovery of Professor St. Lewis.

THE COURT: Okay, I must - I'm sorry....

M. RANCOURT: Je peux clarifier, Monsieur le Juge.

LE TRIBUNAL: Non, non, c'est pas nécessaire.

MR. DEARDEN: I'll do that, thanks. So let's backtrack, Your Honour, if I could.

THE COURT: I'm sorry, yes.

MR. DEARDEN: So we have the examination for discovery of Professor St. Lewis.

THE COURT: Yes.

MR. DEARDEN: Mr. Rancourt files a motion - a refusals motion and he - and that's the - one of the March 6th decisions and he loses - he loses every issue that he raised before Justice Smith in what he claimed should have happened during the examination for discovery of Professor St. Lewis.

THE COURT: So he brings his motion to gain access again - to examine again the plaintiff and he loses that motion?

MR. DEARDEN: No, he hasn't lost it yet. That's what's so odd about all this. He brings a motion about a whole bunch of things about Professor St. Lewis' examination for discovery, okay?

THE COURT: But including....

MR. DEARDEN: He loses them all. He never loses his request to get her re-examined because Justice Smith never dealt with it. How could he? We're not finished the examination for discovery of Gervais. You see that - he has one issue, okay? There's just

- there's an issue amongst a whole bunch of issues that is, "I want - I, Mr. Rancourt, want to re-examine Professor St. Lewis about a date she met Mireille Gervais four years ago." Okay?

THE COURT: So I'm sorry to do this to you, but...

MR. DEARDEN: No, please.

THE COURT: ...but I - as you know, I'm trying to get on board and the train's already been moving for some time. So the plaintiff is examined for discovery by the defendant. There are some refusals that are given during her - Ms. St. Lewis' examination for discovery. The defendant, accordingly brings a motion to - but apparently brings a motion for a number of things, only one of which is to compel the plaintiff to re-attend for a further examination.

MR. DEARDEN: Right.

THE COURT: And so, what are the - just don't list - I don't need to know everything - what are some of the other things? And is that notice of motion before me?

MR. DEARDEN: No. that - the other ones; the March 6th ones - okay, so on March 6th Justice Smith dismisses all those other issues that Mr. Rancourt raised in his refusals motion in the examination for discovery of Professor St. Lewis.

THE COURT: Okay. Moves - okay, to do a bunch of other stuff - a bunch of things, including re-examine plaintiff. And on March the 6th Justice Smith orders - sorry, dismisses defendant's motion on all points, but is silent as to his decision.

Apparently he's silent as to the relief sought by the defendant to re-examine the plaintiff.

MR. DEARDEN: Correct.

THE COURT: But is silent. Re-write to re-examine plaintiff.

MR. DEARDEN: About date they - Gervais and Professor St. Lewis met - about the date of the meeting - recollection of the meeting, okay?

THE COURT: Right to re-examine.

MR. DEARDEN: So you asked me, Your Honour, what were some of the issues that Mr. Rancourt raised other than the re-examination of Professor St. Lewis about the date she met Gervais, communications about the litigation between the University of Ottawa and the plaintiff.

THE COURT: And so where will I find that, Mr. Dearden?

MR. DEARDEN: It is in the March 6th decision of Justice Smith that will be - it'll be...this way, Your Honour,

"Reasons for decision on Mr. Rancourt's discovery refusal motion."

"Reasons for decision on Mr. Rancourt's discovery refusal motion."

THE COURT: Okay. And where do I find that, Sir?

MR. DEARDEN: I actually have it in the other motion record that you first raised this morning. It's the - it's tab - it's at tab 2 of my...

THE COURT: Okay.

MR. DEARDEN: ...responding motion record.

THE COURT: But is it before me?

MR. DEARDEN: Oh, it....

THE COURT: Is it before me on this motion?

MR. DEARDEN: Well, it's law. Is it in my motion...

THE COURT: No, It's - okay, you're right.

MR. DEARDEN: ...record? I don't know.

THE COURT: It is law. It is law.

MR. DEARDEN: It's a decision.

THE COURT: Yes.

MR. DEARDEN: Did I put it....

THE COURT: That's fine. It's a....

MR. DEARDEN: No, I didn't.

THE COURT: No, no, that's fine. It's a decision.

MR. DEARDEN: It may be in....

THE COURT: Okay, so other issues, see Smith, J. re: defendant's motion.

MR. DEARDEN:

"Reasons for decision on Mr. Rancourt's
discovery refusals motion."

THE COURT: I got it, okay. Keep going.

MR. DEARDEN: Okay, so....

THE COURT: So and then he - but he doesn't address a re-examination - he does not in his decision - in his reasons.

MR. DEARDEN: No.

THE COURT: All right.

MR. DEARDEN: No, he couldn't because we're not finished dealing with the issue of whether I get to ask more questions of Ms. Gervais on her refusal - on her affidavit.

THE COURT: Why would that be a block to Justice Smith's dealing with....

MR. DEARDEN: Because my cross isn't finished.

THE COURT: Your cross of Ms. Gervais?

MR. DEARDEN: Of Ms. Gervais - it's not finished and I want to argue that her partisanship, her bias, her axe to grind against Professor St. Lewis should lead the Court to a conclusion that zero weight should be given to the only evidence that supports his request to re-examine the plaintiff.

THE COURT: All right. And therefore to oppose the relief sought to further examine the plaintiff.

MR. DEARDEN: Yes. Yes.

THE COURT: Okay. So plaintiff says no - so it was not an oversight on Justice Smith's part.

MR. DEARDEN: Not only that, he deals with it in a March 27th endorsement too which I'll - I don't need to get into now, but he said he deferred it. Of course he deferred it.

THE COURT: I don't know if - re-examine the plaintiff until...cross-examine complete re: Gervais since plaintiff wishes to show Gervais' lack of credibility to support refusal - to further examine...of the plaintiff. Okay, I think I've got it.

MR. DEARDEN: So Your Honour, could you also make a note of the March 27th case management endorsement that Justice Smith made?

THE COURT: March 27th.

MR. DEARDEN: March 27th case management endorsement, paragraph one.

THE COURT: Endorsement, paragraph one.

MR. DEARDEN: And that's in tab 3 of the responding motion record on the March 6 leave to appeal motion - so the second one we're going to deal with today, but let me just read this in the record.

"Justice Smith holds the second leave application relates to his...

Meaning Mr. Rancourt's,

...request for permission to conduct further examination for discovery of Professor St. Lewis on a discrete issue. The issue was deferred until issues related to the cross-examination of Ms. Gervais were decided."

And that's what you're doing. That's what this motion is about.

"The issue was deferred until issues related to the cross-examination of Ms. Gervais were decided."

That's why he was silent. We haven't argued it yet.

M. RANCOURT: Monsieur le Juge, juste pour vous signaler, cette version des choses est contestée.

THE COURT: Okay. Okay.

MR. DEARDEN: So Your Honour, I took you to R. v. Rothmans decision of Justice Peril (ph) where the credibility and the reliability of the deponent's evidence can be subject to - is proper cross-examination and I asked you to go to the Coburn v. City of Toronto decision, which is at tab 6 of the law compendium. So paragraph 11 is where I was at,

Your Honour, on Coburn v. City of Toronto, where the Court held, at paragraph 11,

"The context will be that motion."

"The context will be that motion."

And I'm submitting the context here is all about credibility.

"Thus a deponent can be cross-examined on issues that bear resemblance - a semblance of relevance to the matters raised by the motion."

The matters raised by the motion are that Professor St. Lewis made repeated false sworn statements and then the bottom - the last sentence of paragraph 11 holds,

"Cross-examination is also proper if it relates to credibility."

Paragraph 12 of Coburn v. City of Toronto,

"The Court should consider each question refused on the basis of the following three criteria."

And the third criteria is,

"Does it relate to the witness' credibility?"

Paragraph 13,

"If the answer to any one of these is yes, the question must be answered."

And if you flip the page, Your Honour, I've reproduced paragraph 29 of that decision,

"There appears to be some discrepancy with respect to what Maritosh (ph) said about McLeod (ph) in his affidavit and what he stated when cross-examined was McLeod (ph) reinstated to the position from which he was suspended or not. The answer to this question could impact on the motion to disqualify so getting a clearer answer, in my view, would assist. Questions that go to credibility are proper questions on cross-examination on an affidavit."

"Questions that go to credibility are proper questions in cross-examination on an affidavit."

The next one, Your Honour, is the Bruce v. McQuarry case, tab 8 of the compendium, paragraphs 12 and 13. Tab 8, Your Honour, if you go to page four of the decision that I've reproduced there so,

"However, the new rules on proportionality do not remove rule 39, which permits a cross-examination on a pending motion. The case law pertaining to rule 39 clearly establishes that the questions in cross-examinations must be relevant to the motion or to the affidavit in support of the motion or to the deponent's credibility."

Skipping to paragraph 13,

"The Courts have held that on cross-examination the examining party is not restricted to asking questions only within the four corners of the affidavit if the questions relate to issues on the motion or the party's credibility."

At tab 10 you have the R. v. DiGiacomo case, paragraph 5.

THE COURT: Yes.

MR. DEARDEN: The master says,

"It appears that at trial questions dealing with bias are admissible. I see no real reason why such questions should not also be admissible on cross-examination on an affidavit and I know of no cases dealing squarely with this matter."

And then the R. v. Hinke (ph) decision at tab 11 relies on the R. v. DiGiacomo decision. You see that at - compendium, tab 11, Your Honour, paragraph 30. It's dealing with an invoice.

"As indicated in R. v. DiGiacomo, in some instances questions not connected with the merits of the matter may be permissible for the purpose of showing bias. The invoice of the factual witness cannot be protected by litigation privilege, it's not a document created or collected by the lawyer, nor could it be said to be part of the lawyer's brief; it's a document prepared by a factual witness who is not a party to the action. No evidence was filed by the parties in this motion addressing the purpose or why this invoice as prepared. In fact, little evidence was filed in this motion. As a result, the Court takes judicial notice that the dominant purpose of preparing and sending an account is usually to be paid for work done. The invoice must be produced. Further, I will allow questions about the invoice to test the credibility of this witness."

And then I'll skip a few lines in paragraph 31,

5 "To whom a factual witness spoke to and what he reviewed to prepare his or her affidavit is relevant to any reasonable assessment of his or her affidavit now permitted at rule 20.04. The party alleging litigation privilege should prove it and on this motion there is no sufficient evidence to prove that this information is protected by litigation privilege."

10 Now, I want to deal with the R. v. Moyle decision, Your Honour, which you'll find at tab 7 - the one that my - that Mr. Rancourt was completely misinterpreting in what the Court was holding about credibility on cross-examination. So Your Honour, at paragraph two, Justice Borans (ph) says,

15 "The issue is the proper scope of the cross-examination of a deponent on an affidavit delivered to be used as evidence on the hearing of an application."

20 So not an interlocutory motion, an application. Here's where the confusion might arise, Your Honour, is at paragraph 10, okay, this is why Justice Borans (ph) uses the term motion judge, but it really is application judge. So at paragraph 10,

25 "An application is an originating process initiated by a notice of application under rule 14.05 of the Rules of Civil Procedure. An application must be heard by a judge who usually hears it when sitting in motions Court. It is for this reason that I will refer to a judge hearing an application as a motions judge."

30 But everything that's said in this decision is about applications because, as Your Honour knows, in a rule 14.05 application there can't be any material

facts in dispute or you've got to go to trial. So paragraph 11, right at the bottom of the page,

5 "In this regard it must be emphasized that this appeal involves the proper scope of the cross-examination of the deponent of an affidavit served in respect to an application in contrast to an interlocutory motion. This is because on the hearing of an application if there is
10 evidentiary dispute with respect to facts which are material to the issue to be resolved the motion judge hearing it will be required to direct the trial of an issue or to convert the application to an action because of the inability of a motion judge to resolve
15 conflicting evidence. On the other hand, certain types of interlocutory motions are often necessarily decided on the basis of conflicting evidence, such as motions for interlocutory injunctive relief. However, with respect to other types of interlocutory motions, such as motions for summary judgment, the motion judge must send the case to where there is conflicting evidence about material facts."

20 And that was...the combined...decisions, but the point was right then.

25 "Therefore whereas the nature of the relief sought on an interlocutory motion often plays a significant role in determining the scope of cross-examination. The same cannot be said about an application. In other words, the process in respect to which an affidavit has been served will assist in defining the proper scope of cross-examination. As I will explain, the scope of cross-examination is also
30 influenced by limitations upon a motion judge...

i.e. application judge,

5 ...as contrasted with the trial judge when faced with conflicting evidence. For the purpose of – to determine the proper scope of cross-examination, it is helpful to understand the different roles of a motion judge hearing an application and a trial judge in respect to borrowing the public law terminology, evidence, which I would characterize as evidence of adjudicated facts."

10 And dropping down to the end of paragraph 12, Your Honour,

15 "Therefore when there are disputed material facts on an application, trial type procedures allowing the opportunity for cross-examination rebuttal are best deployed for the resolution. It follows that the scope of cross of the deponent of an affidavit served on an application will be influenced by the limited role of a motion judge in resolving conflicting evidence in respect to a material fact."

20 Flipping to paragraph 15, Your Honour,

25 "Is the same scope of cross-examination of a trial witness appropriate to cross-examination of the deponent of an affidavit served in support of or in opposition to an application? In my view, the scope of cross-examination in the case of an application is considerably narrower than trial."

30 This is where we get into what Mr. Rancourt thought applied it interlocutory motions.

"Because the motion judge...

i.e. the application judge,

...cannot decide the credibility of affidavit witnesses, as contrasted with trial witnesses, the cross-ex - the scope of cross in respect to credibility would not include cross-examination intended to impeach the character of the witness. However, to the extent that credibility is a relevant issue, all questions may be asked which stand to expose the errors, omissions, inconsistencies, exaggerations, or improbabilities of the deponent's testimony contained in his or her affidavit. Such cross-examination is intended to challenge the truth or accuracy of a fact deposed to by removing the foundation for the fact."

I'm going to stop there, Your Honour. Even if I was in an application, I would be arguing before you today that the questions that I want to ask Ms. Gervais about her bias, her axe to grind, her partisanship, her lack of independence are intended to challenge the truth or accuracy of the facts that she deposed to in that affidavit which was the date she says she met Professor St. Lewis. And I could do that even on an application, but that's not the law for interlocutory motions.

THE COURT: Okay.

MR. DEARDEN: So if you go to paragraph 18 of the R. v. Moyle decision, Your Honour, there was a submission made to the Court - or the Divisional Court that well, we're allowed to test for credibility of a witness and you'll see in paragraph 18, the second - or the third full sentence,

"All of the authorities are concerned with the cross-examination of the deponent of an affidavit in support of or in opposition to an interlocutory motion."

5 So the distinction was made, "Hey, we're in an application here, counsel, not an interlocutory motion, so all those authorities you're giving to me that say that you can cross on the credibility of the witness, they don't apply here because we're dealing with an application, not an interlocutory motion. And further down on paragraph 18, Your Honour, Justice Borans (ph) holds,

10 "It would appear that the scope of cross-examination would be broader on a motion for an interlocutory injunction than in respect of interlocutory motions for other remedies. As well all of the cases are concerned with motions. No authority was provided defining the scope of cross-examination where the affidavit has been served in support of or in opposition to an application, which was the sole issue before the Divisional Court in this case."

15 But the Court did go on, in paragraph 90 - 19, in the conclusion....

20 THE COURT: Sorry.

MR. DEARDEN: So Your Honour, at the bottom of paragraph 19, Justice Borans (ph) held,

25 "The witness may also be cross-examined with the intention of discrediting the witness in respect of the truth of facts deposed to in the affidavit and all questions may be asked which tend to expose the errors, omissions, inconsistency, exaggerations, or improbabilities in respect to such facts."

30 That's what I want to do.

"However, any question designed to impeach the character of the witness will rarely, if ever,

5 be proper as credibility is rarely a relevant concern on an application. Because the determination of credibility of the deponent is part of the process of resolving the material facts which are in dispute is beyond the proper role of the motion judge hearing an application."

10 So the R. v. Moyle decision does not assist Mr. Rancourt one bit. On interlocutory motions credibility can be cross-examined on.

15 And what did Justice Smith hold in his decision? I've outlined his findings, Your Honour, if you have my factum, at paragraph 30.

THE COURT: Yes.

20 MR. DEARDEN: Justice Smith, in paragraph 14, ordered that refusal to test the reliability of her evidence and her independence from Rancourt and her credibility. In paragraph 15,

25 "It was the closeness of her relationship with Rancourt affects the weight to be given to the evidence in her affidavit."

In 18,

30 "I agree that any prior criticism of St. Lewis by Gervais is relevant to whether or not she is biased against her."

Paragraph 20 of the decision,

"St. Lewis submits the questions under this issue; Mireille Gervais' support of the defendant, are relevant to the issue of whether Gervais is a biased and partisan witness against

St. Lewis and therefore affects her credibility and the weight to be given to the affidavit. I agree with this submission."

Paragraph 21,

"The defendant's close and partisan relationship with Gervais and Gervais is biased and has an axe to grind against St. Lewis. I agree that the relationship between Gervais and Rancourt is relevant to her credibility and to the weight to be given to her affidavit."

Paragraph 22,

"I find that the questions under issue G; the interaction between Mireille Gervais and Professor St. Lewis are relevant to establishing the relationship between St. Lewis and Gervais and are relevant to test her credibility and to the weight to be given to the affidavit evidence."

Paragraph 23, the relationship between St. Lewis and Gervais. Paragraph 24 deals with the issue of the accuracy of Gervais' recollection of when she met St. Lewis.

"I find the series of questions regarding the SAC data prior to November 28 are relevant to the witness' recollection about the events during the relevant time."

Paragraph 26, whether she's a partisan supporter of the defendant and biased against St. Lewis. In paragraph 27,

"The reason the refusal was ordered to be answered was the accuracy of her memory."

5 So there are various reasons that Justice Smith
relied upon in ordering Ms. Gervais to answer the
approximately 90 questions that Mr. Rancourt refused
to let her answer.

10 So Your Honour, it's my submission on the scope of
cross-examination for interlocutory motions that the
Gervais affidavit was filed by Mr. Rancourt solely
for the purpose of attacking the credibility of the
testimony that Professor St. Lewis provided during
her examination for discovery about the date she met
with Gervais. And that Gervais affidavit is the
only evidence that Mr. Rancourt filed to support his
15 motion to compel Professor St. Lewis to re-attend
her examination for discovery.

THE COURT: Showing that conflict, does that assist -
potentially assist his motion to regain access to
the plaintiff?

20 MR. DEARDEN: In my submission, it doesn't.

THE COURT: No, I'm not....

25 MR. DEARDEN: He can put her on a trial, but for, you
know, simply - I've never seen this happen in my
life before, that during an examination for
discovery you want to re-examine the party and you
show - you somehow share the evidence with a third
party witness and they put an affidavit and say,
"No, that didn't happen that date." Can you imagine
how the system would be bogged down, Your Honour, if
that was allowed? Like, so that you would be
30 constantly doing examinations for discovery and you
would allow credibility to - a full frontal assault

on the credibility of somebody examined under discovery to be attacked by somebody who is your partisan supporter, has an axe to grind against the deponent? It would be unbelievable what could happen in civil proceedings if that was allowed. I've never seen it. But that's what he's doing and I want to - and in my respectful submission, Justice Smith was completely right to allow me to test all of that evidence that I just read or - those questions that I just read that Justice Smith decided in his December 7th decision, because it's all about credibility. That's the sole issue. And so not only - all I have to do to make my question is a semblance of relevance, and I repeat, this is the issue. Credibility is the issue, not just a semblance of relevance, it's the only issue. He said, she said. That's what he's trying to do there. And I say it's wrong and my primary argument, as I said before, is you can't do that on an examination for discovery, that's for trial. If you want to put on a witness, that's for trial. But secondly....

THE COURT: I mean, theoretically, if you get to cross-examine Ms. Gervais again and if the Court then, on the return of this remaining issue as to accessing Ms. St. Lewis, says, "No, no, no, no. I - the Court concludes Ms. Gervais is not credible.", et cetera. I mean, there's the potential that that finding may negatively impact Ms. Gervais as a witness at trial, but your response to that is, "Well, Mr. Defendant, you opened the door to this. You brought it on."

5 MR. DEARDEN: Yes, it's not a one-way street, Your Honour. Mr. Rancourt can't do what he did and put Gervais on to say that, "There's my evidence that a Professor of law – an officer of the Court, and a lawyer made repeated false sworn statements.", and keep Gervais immune from being cross-examined on her credibility? It's not a one-way street. He opened that door wide open to test credibility, because that's all this is is an attack on the memory of Professor St. Lewis and her credibility. And that's why Justice Smith did allow the questions going to bias, reliability, independence, axe to grind, recollection. In my submission, Your Honour, the Court needs that – needs to know that evidence to determine what weight to give it.

10 THE COURT: This other motion that we haven't got to yet, all right, is that other motion the defendant's seeking – sorry, the defendant – it's – because....

15 MR. DEARDEN: It's Mr. Rancourt appealing the March 6th decision of Justice Smith.

20 THE COURT: On all these other points.

MR. DEARDEN: No, no. He only put in play one issue which was his right to re-examine Professor St. Lewis.

25 THE COURT: Ah-ha...

MR. DEARDEN: And I....

THE COURT: ...so they are linked. So but these two motions are inextricably linked.

30 MR. DEARDEN: They aren't because Justice Smith – not inextricably...

THE COURT: Well....

MR. DEARDEN: ...because Justice Smith...

THE COURT: I see...word....

MR. DEARDEN: ...hasn't decided....

THE COURT: My enthusiasm took over.

MR. DEARDEN: Okay.

THE COURT: Just took over. There is a direct link between these two. In other words - anyway, I'll think through it.

MR. DEARDEN: Okay, no....

THE COURT: You carry on.

MR. DEARDEN: No...

THE COURT: You carry on.

MR. DEARDEN: ...I hear what you're saying, Your Honour, and the leave motion - the March 6th one....

THE COURT: But you answer my question, and that is that the substance of this other motion - the substance of this other motion is the right of the defendant to re-examine the plaintiff.

MR. DEARDEN: Yes, he - I'll read it.

"The defendant seeks leave to appeal in order to obtain a limited re-examination to test the truth of material facts in the plaintiff's evaluation report and in her pleadings and discovery testimony about the plaintiff having notified or met the SAC, Gervais, prior to finalizing her evaluation report. Thus leave to appeal is sought of this discrete matter."

Which is important because he wants to rely on his fair...defence. And when I saw this leave motion, Your Honour, I wrote Judge Smith - and it's in this record - and I made an offer to my - Mr. Rancourt and said, "It hasn't been decided yet. Drop it. Like, withdraw it. This issue's not decided yet

5 because I need to finish my cross of Gervais which is going to be argued on April 17th, so drop it." And he won't - he won't and then he writes Judge Smith and asks him to reconsider the endorsement because I asked Judge Smith, set it down - set this motion down today because....

THE COURT: Which one? The second motion?

10 MR. DEARDEN: The second one because I want to argue before Justice Kane that it should be dismissed because it hasn't been decided yet and I'm going to seek full indemnity costs for this waste of time because it hasn't been decided. It's just outrageous. So they're connected in that way, but he's saying - his ground is Judge Smith's decision of March 6th doesn't deal with my issue of re-examining...

15 THE COURT: Okay.

MR. DEARDEN: ...Professor St. Lewis.

20 THE COURT: So did - I saw the endorsement of Judge Smith saying that the December 7th - his December 7th decision should be dealt with today. Is there another endorsement saying that this second motion should be dealt with today?

25 MR. DEARDEN: Yes, that's the one I read in earlier, Your Honour.

THE COURT: Okay.

MR. DEARDEN: It's the March 27th case management endorsement where Justice Smith says,

30 "By letter dated March 19th, counsel for Ms. St. Lewis has advised that Mr. Rancourt is seeking leave to appeal two more orders. The first at leave application is with regard to his refusal

to answer two questions during his discovery. The second leave application relates to his request for permission to conduct further examination for discovery of Professor St. Lewis on a discrete issue. This issue was deferred until issues related to the cross-examination of Ms. Gervais were decided."

So Your Honour, going back to my argument here, one of the decisions that Judge Smith made in these refusals on Gervais' affidavit is to make her produce drafts of the affidavit that she finally filed or that Mr. Rancourt filed them and she finally swore. And I deal with that in the factum at paragraphs 35 to 38 and there is no doubt in my submission that the preparation of drafts of affidavits have to be produced. The Court certainly needs to know if Mr. Rancourt prepared the first draft and what edits he recommended be made as opposed to Ms. Gervais doing the first draft and her making whatever edits and whatever discussions they had about what that final affidavit would look like.

M. RANCOURT: Objection, rien de ça est en evidence, Monsieur le Juge.

MR. DEARDEN: Sorry, I wasn't plugged in. What did you say?

MR. RANCOURT: None of what you just said is in evidence.

MR. DEARDEN: Thanks. So that's drafts of affidavit, Your Honour.

Litigation privilege, I deal with this at the factum at paragraphs 39 to 51. I first note that Mr. Rancourt's notice of motion seeking leave to appeal

5 does not plead litigation privilege as a ground of appeal, but he certainly argued it in his factum. But the burden is on him to establish litigation privilege with evidence, Your Honour, and in my submission, he hasn't established the privilege in evidence.

THE COURT: Such as?

10 MR. DEARDEN: The - I had asked, on my examination for discovery of Mr. Rancourt, who are your witnesses, because he's obligated to give me a witness list and the gist of the evidence. He refuses. I ask him, you know, is Gervais going to be one of your witnesses? Won't tell me. Okay. He hasn't complied with Justice Smith's order to
15 provide me a witness list to date, so I don't have a witness list that Gervais is on, but yet he puts in his factum, "She's going to be my witness and I have litigation privilege." He did produce the e-mails that I took you to, Your Honour, which deal with the defence of this libel action and his interaction
20 with Ms. Gervais and didn't invoke litigation privilege over those. There is no litigation privilege, Your Honour, once you file the affidavit. This is the litigation. Right? There is no zone of privacy anymore. That affidavit was filed for this motion and the litigation privilege ends. He filed it. There's no pending litigation. I'm not going into his files. He filed her affidavit. In other words, Your Honour, the litigation now exists. It's
25 not pending, it's not apprehended. It exists. It's - when he sought to get an order to request Professor St. Lewis to be re-examined for discovery

5 and put Ms. Gervais' affidavit in as his only
evidence to support that order - support obtaining
that order, litigation privilege disappeared, if it
ever existed. In this context, Your Honour, it's
the equivalent to your calling a witness at trial.
Okay, once somebody calls a witness at trial,
10 produce all your communications that you've had with
counsel, what documents did he give you, what
documents did you give him? It's all wide open at
trial. Well, we are in the trial, if you will, with
this motion on Gervais' affidavit that is his
support for compelling Professor St. Lewis to be re-
examined.

15 And Your Honour, if you have my factum at paragraphs
43 and 44, I've cited two cases that a party waives
any litigation privilege as soon as the witness is
tendered. It's paragraphs 43 and 44 of the factum.
M. RANCOURT: Y'a peut-être une erreur parce que le
20 paragraphe 43 ne cite pas....

LE TRIBUNAL: Monsieur Rancourt, vous allez - vous
avez, comme vous savez, j'ai déjà mentionné ça comme
deux ou trois fois, le droit de réplique. Continuez
- please carry on, Mr. Dearden.

25 MR. DEARDEN: In paragraph 44 of my factum, Your
Honour, I cite the R. v. Abraham case and the R. v.
Chang case. By tendering that - one of those
decisions says,

30 "By tendering Mr. Halls, an expert witness,
Continental has waived litigation privilege
attaching to any written documentation between
Mr. Halls and Steichman (ph) and Elliott (ph).

Continental's counsel, regarding Mr. Halls' affidavit or his evidence, including prior drafts of his affidavit report."

The Vancouver Community College (ph) case that I have at paragraph 45 of the factum, the Court holds,

"In holding out the witness' opinion as trustworthy, the party calling him impliedly waives any privilege that previously protected the expert's papers from production. He presents his evidence to the Court and represents, at least at the outset, that the evidence will withstand even the most rigorous cross-examination. That constitutes an implied waiver over papers in a witness' possession which are relevant to the preparation or formulation of the opinions offered, as well as to his consistency, reliability, qualifications, and other matters touching on credibility."

So my submission, in short, Your Honour, as soon as Mr. Rancourt tendered Ms. Gervais' affidavit to contradict the testimony of Professor St. Lewis, he was holding out her evidence as trustworthy and waived any litigation privilege that might have existed.

THE COURT: I don't understand paragraph 47 of your factum.

MR. DEARDEN: Paragraphs 47, Your Honour, through to paragraph 49, deal with the point Mr. Rancourt made that Justice Smith didn't mention in his reasons...

THE COURT: Yes. Yes.

MR. DEARDEN: ...that - anything about litigation privilege. We point out that, for the first time, he raised the issue on the October 30th hearing of the motion, then dealt with it in submissions, but

our point is simply, a judge need not deal with the issue – with every issue raised in a proceeding.

The judge – if you see in paragraph 49, a judge's reasons must be adequate, but don't have to cover each and every issue raised. And I say that's

especially so, Your Honour, when a judge is dealing – a motions judge is dealing with a refusals motion within a refusals motion – that there was no need for Justice Smith to expressly deal with Mr.

Rancourt's – and I'm calling it specious and ludicrous argument that there's litigation privilege over Ms. Gervais' affidavit evidence that he field and she voluntarily swore. Once that happened there was no zone of privacy anymore and that is a trite proposition, in my respectful submission. So that's why I had paragraphs 47....

THE COURT: That's the point, but really, the fact that he didn't raise the issue until October 30th, 2012, nothing turns on that.

MR. DEARDEN: Only that that may be why Justice Smith didn't mention it. I don't know.

THE COURT: But his – Justice Smith's decision's in December.

MR. DEARDEN: Yes, I know. Yes, I agree.

THE COURT: All right.

MR. DEARDEN: I agree.

THE COURT: All right.

MR. DEARDEN: The point is a judge doesn't have to deal with...

THE COURT: he doesn't have to deal with....

MR. DEARDEN: ...every issue.

THE COURT: No.

MR. DEARDEN: My last point, Your Honour, if you're ready...

THE COURT: Yes.

MR. DEARDEN: ...is the argument that was made by Mr. Rancourt that somehow - that R. v. Stavro (ph) decision and dealing with rule 30.10 was an error on the part of Justice Smith. It's completely irrelevant. That third party production - yes, the rule specifically says the onus is whoever is trying to get a third party to produce documents or to get a third party to be examined. The onus is on them prove that they are entitled to the evidence. That's not what we're dealing with here. We're dealing with the cross-examination of a deponent of an affidavit and productions can be ordered out of such a cross-examination all the time. So rule 30.10 and the R. v. Stavro (ph) decision is completely irrelevant.

But on the FIPA documents, Your Honour, because he spent some time on the freedom of information request and I ask you to read carefully paragraphs 52 through to 56 of my factum because if you turn to the evidence compendium - and this will be my last point - the evidence compendium...

THE COURT: Yes.

MR. DEARDEN: ...tab 12. Here's exhibit 6 that Mr. Rancourt was repeatedly referring to during his argument. This is, at tab 12, the partial response to the freedom of information request that Ms. Gervais made - the partial response that she decided to publish, okay? And if you look at the bottom of

the first page, you should have an Allan (ph) Rock e-mail dated November 12th, 2008...

THE COURT: Yes.

MR. DEARDEN: ...and you see he says,

"We should repeat our request for the detailed information to which he did not respond. We should also...."

Then you turn the page and she didn't reproduce the rest of that e-mail. And there's all kinds of other documents here that she's redacted and not reproduced. Somewhere in here, Your Honour, there could very well be reference to meeting Joanne St. Lewis so this is all prior to the release of Professor St. Lewis' evaluation report, back in November of 2008. So the answer could have been - so what we don't know and why Justice Smith ordered that these documents be produced is we don't know the rest of what Allan (ph) Rock was saying should be done about this detailed information. But we do know that Professor St. Lewis testified about the data that was relied on by Gervais, which is referred to in paragraph 54 of the factum. So we don't know what references to Professor St. Lewis are in these other redacted portions of the FIPA documents and that's why Justice Smith ordered production. Because we do know that Professor St. Lewis testified she met Ms. Gervais on November 14th, 2008, that Ms. Gervais was not cooperative, that she wasn't going to provide Professor St. Lewis with the data, and that Gervais said she was concerned about the confidentiality of the data.

5 And it's undisputed that the FIPA documents disclose communications with Gervais about her SAC report prior to the release of Professor St. Lewis' evaluation report. We're talking about Allan (ph) Rock saying, as an example,

"We should repeat our request for the detailed information to which he did not respond. We should also...."

10 You know, we should also make sure that she meets with Professor St. Lewis or something to that effect, but to, you know, redact the documents and then come forth and say, "I never - I never met Joanne St. Lewis until September 2009.", or after
15 that September 2009 e-mail. That's why Justice Smith ordered the rest of these productions from Ms. Gervais. What - it goes to her - is her recollection right? Is there something in whatever the redacted - the amount of redacted documents are
20 that do reference Professor St. Lewis or do reference that U of O asked Professor St. Lewis to evaluate the SAC report?

25 THE COURT: But it's sort of litigation privilege, I mean, if you're putting in some documents and you say - and then the other side says, "Well, give me all of those documents.", or, "series of documents.", you can't pick and choose.

30 MR. DEARDEN: You can't cherry pick, exactly. Yes. And you especially can't, you know, with the November 12th - because remember Professor St. Lewis' report was after November 12th, 2008 - you know, put in an Allan (ph) Rock e-mail about looking

5 for - requesting detailed information which he did not respond, we should also - and then, "No, I'm not going to answer any questions about that." You can't cherry pick. You cannot cherry pick, and that's what they're doing. And Mr. Rancourt very much does not want that evidence is the record.

10 He also raised, Your Honour, a section 15 Charter argument, which I'm assuming he dropped. I've dealt with it in the factum at paragraphs 59 to 65, but we haven't heard a word about it so I'm not going there.

THE COURT: Well, he hasn't argued it so - no.

15 MR. DEARDEN: So, Your Honour, subject to any questions you have - I did it in an hour and a half.

THE COURT: Okay, and R. v. Watson or something, how is that relevant?

20 MR. DEARDEN: That was on - and bear with me, Your Honour - yes, it's a criminal case and it was trial - the principle still applies in my respectful submission. So compendium, tab 9 of law.

25 THE COURT: so you feel that it still applies by way of analogy?

MR. DEARDEN: Yes.

THE COURT: Notwithstanding the distinguishing factors.

30 MR. DEARDEN: Here's - yes, it was said, no doubt about it, in a criminal trial,

"A witness' credibility may be impeached by cross-examination intended to show that the witness has a bias for or against a party to litigation or a personal interest to be served by testifying in a particular manner."

5 That principle, Your Honour, I submit is applicable. To motions, to applications, to trials, whether they're criminal or civil, it....

10 THE COURT: Right. That case doesn't stand for that principle.

15 MR. DEARDEN: It says - well, it's - that is the principle that I just read and I'm saying the principle is applicable - it doesn't - obviously this case doesn't say and this would apply to motions, applications, trials. It was, you know,

"A witness' credibility may be impeached by cross-examination intended to show that a witness has a bias, for or against a party to litigation or a personal interest to be served by testifying in a particular manner."

20 Why can't that principle be applied equally to motions, to - you know, deponents of affidavits?

25 THE COURT: I guess by analogy, Judge Smith says it does, without sort of articulating - he simply, in his decision, doesn't zero in and articulate, "I recognize that this is a trial decision, but the principle applies to a cross-examination on an interlocutory motion."

MR. DEARDEN: Yes.

30 THE COURT: He just doesn't say that, but....

MR. DEARDEN: He cites R. v. Watson, then he cites the Bruce v. McQuarry decision...

THE COURT: He does go into Bruce v. McQuarry.

MR. DEARDEN: ...which then has...

THE COURT: Yes.

MR. DEARDEN: ...the Coburn v. City of Toronto
decision.

THE COURT: Yes. I was just interested....

MR. DEARDEN: And he's guided - he was guided by the
right principles...

THE COURT: Okay.

MR. DEARDEN: ...and that's what Mr. Rancourt can't
get over...

THE COURT: Great.

MR. DEARDEN: ...in the first branch of the test.

THE COURT: Thank you very much, Mr. Dearden. We're
going to take ten minutes and then we're - on va
recommencer avec votre réplique.

M. RANCOURT: Merci.

R E C E S S

[4:36 p.m.]

U P O N R E S U M I N G

[4:51 p.m.]

MR. DEARDEN: Sorry, Your Honour, for being late.

THE COURT: No problem.

MR. DEARDEN: I was outside though.

LE TRIBUNAL: Moi je suis prêt quand vous êtes prêt,
Monsieur Rancourt.

RÉPLIQUE PAR M. RANCOURT:

Merci, Monsieur le Juge. Vous comprenez que j'ai
des préparations de dernière minutes, mais je suis
prêt - je suis prêt. Okay. Donc, j'ai réussi à

organiser mes dernières pensées, là, en réponse.
Alors voici: premier point, cette prochaine motion
dont on a beaucoup parlée pour aujourd'hui, je suis
inquiet parce que vous avez entendu monsieur Dearden
beaucoup sur la nature de cette motion, cette
deuxième motion, mais je n'ai pas eu la chance moi
de présenter les raisons que cette motion doit être
différée à plus tard. Y'a des très bonnes raisons.
J'ai des....

LE TRIBUNAL: Mais la meilleure raison, c'est parce
que c'est 5 heures moins 10.

M. RANCOURT: Oui, d'accord. Mais si jamais y'avait
des décisions par rapport à cette motion, je
voudrais la chance d'expliquer pourquoi j'ai besoin
d'une très grande extension. Je dois faire un
«perfect an appeal» comme on dit en anglais, pour...

LE TRIBUNAL: Vous avez besoin d'une extension vis-à-
vis cette motion, vous devrez faire - vous devrez
faire - prendre les mesures nécessaires pour
arranger une conférence avec la Juge Smith.

M. RANCOURT: Oui et je planifie faire ça le plus tôt
possible, Monsieur le Juge, mais j'ai été à la
dernière seconde pour tout ceci. Alors - donc, je
voulais exprimer cette préoccupation et maintenant,
je me lance dans ma réponse.

Okay, premièrement, dans cette motion pour demander
appel, la règle dit très clairement que nous devons
fournir des factums. Nous n'avons pas le choix et
les parties se fient au factum et j'ai une première
objection et plainte très sérieuse de quelque chose
qui vient de se passer aujourd'hui, monsieur Dearden

5 a fait un argument majeur qui n'est pas du tout dans son factum, même s'il prétend que c'est dans son factum. Et cet argument majeur - et qu'il a tiré une distinction entre une motion versus application. Il n'y a nulle part dans le factum de monsieur Dearden où il dit qu'il y a une distinction à faire par rapport à ces questions devant nous aujourd'hui. LE TRIBUNAL: Mais cette distinction est très claire dans les arrêts, dans les décisions que vous avez présentées à la Cour. Vous avez présenté pour le même principe, les décisions décidées par un juge ou les juges vis-à-vis une application, puis y'en a d'autres sur le même point qui sont décidées vis-à-vis une motion. La distinction est très claire. Dans les décisions que vous allez présenter.

10 M. RANCOURT: D'accord, Monsieur le Juge. Je vous signale que je suis auto-représenté et que cet argument n'est pas fait par monsieur Dearden dans son factum. Ça m'a pris par surprise. Je l'aurais préparé - si dans son factum il avait signalé les paragraphes qu'il a signalés aujourd'hui devant nous, s'il avait fait même juste mentionner qu'il allait argumenter la distinction....

15 LE TRIBUNAL: Mais le paragraphe de quoi? S'il avait signalé les paragraphes de quoi?

20 M. RANCOURT: Dans les décisions qu'il a citées.

LE TRIBUNAL: Mais les décisions sont devant moi.

M. RANCOURT: Oui.

25 LE TRIBUNAL: Si vous voulez - si par exemple vous avez - si vous avez dans votre factum, bon, l'arrêt numéro 1 puis le paragraphe numéro 12, vous avez - vous avez le droit même si vous avez mentionné

30

seulement le paragraphe 12. Vous avez le droit durant votre présentation, de mentionner aussi le paragraphe 13.

5 M. RANCOURT: Oui. Mon - je vais terminer sur ce point, Monsieur le Juge. Mon seul point est que monsieur Dearden a dit que son troisième thème aujourd'hui était la distinction entre motion et application. Nulle part dans son factum est-ce qu'il mentionne ça. C'est tout. Je voulais juste signaler ça.

10 LE TRIBUNAL: D'accord.

M. RANCOURT: Et maintenant, je voudrais vous amener à mon factum en réponse à ce que monsieur Dearden avance, mon factum aux paragraphes 42 et 43.

15 LE TRIBUNAL: Factum en réponse?

M. RANCOURT: Non, dans la réponse de maintenant, je...

LE TRIBUNAL: Oui, oui. Oui, oui.

20 M. RANCOURT: ...j'attire votre attention à mon factum.

LE TRIBUNAL: D'accord. Oui. Okay.

M. RANCOURT: Et donc, dans mon factum au paragraphe 42...

25 LE TRIBUNAL: Oui.

M. RANCOURT: ...je dis:

30 "The said - decision of the Divisional Court and the *R. v. Newcastle* decision of the Court of Appeal were for applications and the test for proper questions on an affidavit is the same for an application or a motion."

Je dis - et là je me réfère à une référence qui est Ontario v. Rothman, une autorité - et à Ontario v.

Rothman, si on va dans mon livre des autorités à l'onglet numéro 13, à la page 32, vous voyez que Rothmans a fait une revue très détaillée des refus sur des motions et sa section s'intitule:

"Examination for deponent for motions and applications, evidence by affidavit."

Il dit. Ça commence à la page 32 et vous allez voir qu'il y a plusieurs pages où il décrit les tests et il traite les applications et les motions exactement de la même façon avec les mêmes tests dans «Ontario versus Rothmans». Ça c'est ma première réponse.

Et ma deuxième réponse, c'est que les règles de procédure traitent les motions et les applications de façon identique en ce qui a trait au contre-examinatoire (sic) des affiants. Et donc, ce sont les règles de procédure 39.02, 37.13...

LE TRIBUNAL: Excusez-moi, 30 - 30?

M. RANCOURT: 39.02...

LE TRIBUNAL: Oui.

M. RANCOURT: ...37.13 et 38.10 et on peut voir que, en ce qui a trait à l'examination (sic) des affiants, les règles traitent les motions et les applications de façons identiques.

LE TRIBUNAL: Et la dernière c'est - la troisième c'était 38.?

M. RANCOURT: .10.

LE TRIBUNAL: 10.

M. RANCOURT: Et ça, c'est dans mon affidavit, c'est le paragraphe 43 de mon affidavit. Mais plus

important que ça ou tout aussi important, c'est le fait que le principe de base qui a été expliqué par la Cour d'Appel, c'est que dans le cas d'une application, un juge ne peut jamais déterminer une question de crédibilité. Et donc, c'est un principe très fort. Il n'est pas - il ne peut pas le faire des fois dépendant des circonstances, mais jamais, essentiellement jamais. C'est un principe qui dit qu'un juge ne peut pas déterminer la crédibilité d'un affiant à partir d'un record sur papier. Même si Newcastle, c'est-à-dire Newcastle, la décision de la Cour d'Appel est pour une application, ma position, Monsieur le Juge, c'est que le principe est le même et que ce principe est exactement celui qui est appliqué dans Caputto, qui est la référence la plus citée par rapport à ça où on dit - on dit - on fait une distinction très claire entre crédibilité de l'évidence et crédibilité de la personne. Cette distinction est essentielle. C'est toutes les autorités font la distinction entre crédibilité des faits qui sont en conflit, les évidences versus crédibilité des témoins de l'affiant. On ne peut pas toucher à la deuxième, mais on test les faits le mieux qu'on peut dans une motion. Caputto est très clair là-dessus. Toutes les autorités qui cite Caputto sont claires sur ce point-là et ça, c'est le même principe - ça, ça vient du fait - ça vient du même principe que la Cour d'Appel Newcastle qui dit: ça se fait pas pour les applications.

5 Et je vous signale aussi, Monsieur le Juge, pendant qu'on est sur ce point-là, les autorités que cite monsieur Dearden tel que Seagate et autres datent des années 80, datent des années 1980 alors que Maul (ph) date de 1995 et Newcastle de 2005. C'est des anciennes autorités où ce principe n'avait pas été encore pleinement établi. En fait, c'était les premières fois dans la jurisprudence où on parlait de la crédibilité d'un affiant ou - d'après ce que j'ai pu voir. J'ai peut-être pas raison là-dessus, mais y'a un juge dans une des autorités qui dit: je n'ai pas vu beaucoup sur ça, ça me surprend, etcetera. Donc, ce sont des vieilles autorités que monsieur Dearden a réussi à trouver, quelques contre exemples, mais c'est Caputto qu'il faut suivre. Tout le monde cite Caputto et Caputto est très clair qu'on doit faire la distinction entre crédibilité des faits, de l'évidence, tester les faits. C'est ça le but sur une motion et pas traverser cette ligne vers crédibilité de la personne. Ça c'est en réponse à ce point-là.

25 Deuxièmement, je veux vous signaler, Monsieur le Juge, que c'est monsieur Dearden qui a amené une motion de refus dans une motion de refus. C'est monsieur Dearden qui amène une deuxième motion, une motion de refus dans une motion de refus. C'est lui-même qui fait ça. Et il fait ça pourquoi? Il fait ça pour aller chercher d'autres documents, mais je lui ai déjà produit, au préalable, les documents qu'il utilise. Je lui ai produit une soi-disant note d'amour entre madame Gervais et moi-même. Je

lui ai produit tout ce qu'il veut pour - s'il veut attaquer la crédibilité de madame Gervais, il a tout ce qu'il veut, sauf que le juge, lui, sera contraint qu'il ne peut pas juger la crédibilité sur papier à partir de documents comme ça.

Donc, il a déjà les documents dont il a besoin, mais malgré ça, il amène une motion de refus dans une motion de refus. Et moi, je pense, je crois, que son vrai but c'est de découvrir madame Gervais qui sera un témoin-clé au procès et là au procès, monsieur Dearden pourra attaquer sa crédibilité avec les protections du procès, avec le juge à procès. Il pourra amener ces documents que je lui ai déjà fournis. Il pourra dire à madame Gervais: voici un document qui dit que monsieur un tel vous aime, alors qu'est-ce que ça veut dire, qu'est-ce que vous dites de ça. Il pourra faire tout ce qu'il veut au procès.

LE TRIBUNAL: Est-ce que vous avez décidé de présenter madame Gervais comme une de vos témoins?

M. RANCOURT: Oui, absolument. C'est clair que j'ai besoin de madame Gervais, parce que j'ai besoin d'authentifier (sic) les documents qui avaient été rendus public par elle. Il n'y a pas de - il n'y a pas de vraiment de choix là. Mais donc, monsieur Dearden sait qu'il aura à confronter madame Gervais au procès et c'est pour ça qu'il veut faire une découverte prématurée. Il veut faire une découverte...

MR. DEARDEN: Your Honour...

M. RANCOURT: ...sur une troisième, une non-partie...

MR. DEARDEN: Your Honour - Mr. Rancourt, I've asked Your Honour a question so could you please stop so that I can....

THE COURT: Your objection is what, Mr. Dearden?

MR. DEARDEN: That's simply it, is I object to this argument that he's making that somehow I'm trying to get discovery of Ms. Gervais. Your Honour knows why I've asked the questions that I've asked and which Justice Smith ordered. I find it offensive that he is suggesting that I'm doing a discovery as opposed to a cross-examination for the reasons that I've submitted to the Court, that I've made.

LE TRIBUNAL: Okay. Continuez, Monsieur Rancourt.

M. RANCOURT: Merci. Donc mon argument, tel que je présente, offense mon ami. C'est....

LE TRIBUNAL: Continuez, Monsieur Rancourt.

M. RANCOURT: Merci. Donc il pourra faire tout ça. Il a déjà beaucoup de documents, mais il fait cette chose inutile que des refus sur des refus pour aller chercher je ne sais pas quoi d'autres, plein d'autres affaires, des choses qu'il n'a pas réussi à avoir en découverte, avec raison et là, Monsieur le Juge, je veux signaler que vous avez fait un commentaire tantôt qui peut-être me signale que y'a une mécompréhension de quelque chose, alors je veux vous signaler ça tout de suite. Par rapport au document d'accès à l'information, la partie - d'abord, il n'est pas - il est absolument pas vrai, à ma compréhension, que madame Gervais a noirci ou «redacted» les documents. Ma compréhension, c'est que des documents d'accès à l'information, c'est l'université qui les fournit et elle enlève des

choses suivant la Loi d'accès à l'information.
C'est pour ça qu'il y a des éléments qui sont
noircis. Donc ça, je pense que c'est proposer
quelque chose qui risque d'induire la Cour en
erreur.

MR. DEARDEN: I object, Your Honour.

LE TRIBUNAL: Non, non....

MR. DEARDEN: That's not in the evidence.

THE COURT: Sorry. The - est-ce que j'ai de la
preuve que c'est la - c'est l'université qui a fait
ça?

M. RANCOURT: Y'a pas de preuve dans cette motion,
non.

LE TRIBUNAL: Pas de preuve ni sur un côté ou ni
l'autre?

M. RANCOURT: C'est ça.

LE TRIBUNAL: Oui.

M. RANCOURT: Et moi non plus je n'ai pas de preuve
personnellement. Je ne le sais pas. Tout ce que je
sais, c'est que ça été - j'ai de l'expérience avec
les demandes d'accès à l'information et je sais
que....

LE TRIBUNAL: Bien, vous ne pouvez pas présenter
votre expérience.

M. RANCOURT: D'accord. Okay. Donc y'a ça - mais
monsieur Dearden a affirmé ça sans preuve lui aussi,
il faut dire, hein? Donc, je fais simplement
clarifier.

Maintenant, ça c'est par rapport à la rédaction,
mais aussi vous avez fait un commentaire, Monsieur

le Juge, que j'aimerais juste clarifier. Vous avez dit en anglais:

"Can't pick and choose."

Si vous mettez quelque chose en évidence, on ne peut pas aller chercher un morceau puis le mettre - n'est-ce pas? Et je veux clarifier quelque chose de très important. Ces documents d'accès à l'information n'ont pas été mis en évidence. Ils sont - ils ont été mis publiquement. Ils font partis du procès central. Je vais les mettre en évidence quand je vais prouver que c'est des documents authentiques. Ça n'a pas été mis en évidence dans cette motion. Ce n'est pas des documents qui sont authenticés (sic) et mis en évidence dans cette motion. Monsieur Dearden - ils ont été fournis par des productions en «Discovery», mais c'est quelque chose qui....

LE TRIBUNAL: Bien les documents qu'ils - que monsieur Dearden nous a amenés, qu'ils étaient signifiés comme pièce pendant les examens...

M. RANCOURT: Oui.

LE TRIBUNAL: ...que pendant les interrogatoires...

M. RANCOURT: Oui.

LE TRIBUNAL: ...est-ce que ça vient de la pile de documents que madame Gervais a reçu de l'université?

M. RANCOURT: Je ne le sais pas. On n'a pas de preuve de ça. On a - on a madame Gervais qui dit:

«J'ai fait une demande d'accès à l'information. Voici des documents qui les rendent publics.»

LE TRIBUNAL: Y'en a quelques-uns qui - ce sont les courriels électroniques avec Allan Rock.

M. RANCOURT: Uh-hmm. Ce sont des vrais documents, bien sûr.

LE TRIBUNAL: Non, ça ce n'est pas la - ça ce n'est pas la question. Ça vient des documents de l'université.

M. RANCOURT: Oui.

LE TRIBUNAL: Oui, puis ce n'est pas parmi les autres documents qui ont été présentés par la....

M. RANCOURT: Ça c'est très intéressant que vous demandiez cette question-là, Monsieur le Juge, parce qu'il y a dans cette pile qui ont été rendus publics, des courriels de madame St-Lewis à Allan Rock et à d'autres, que madame St-Lewis n'a pas produit en découverte.

LE TRIBUNAL: Ah bien ça c'est un autre sujet là.

M. RANCOURT: Oui, mais y'a pas - ce que je dis, c'est qu'il n'y a pas façon de vérifier, parce que je n'ai pas eu en découverte ces documents séparément. Tout ce qu'on a c'est madame Gervais qui sur son blog dit:

«Voici, je rend ces documents publics là».

Moi je dis, je crois que c'est de vrais documents. Je les utilise pour faire ma critique et ensuite, on a une action diffamation.

LE TRIBUNAL: Excuse-moi. Qui a dit: «J'annonce ça sur mon blog»? Qui a dit ça? Madame Gervais?

M. RANCOURT: Madame Gervais.

LE TRIBUNAL: Est-ce que j'ai la preuve de ça?

5 M. RANCOURT: Je ne sais pas si cette preuve est dans cette motion, mais c'est connu dans l'action, c'est reconnu dans l'action qu'elle a soumis un article blog comme ça, c'est sur le record dans l'action. Donc, elle a dans un article blog dit:

«J'ai fait une demande d'accès à l'information. Voici ce que ça montre».

10 Elle a rendu public ces - cette partie des documents. Moi, je suis allé chercher ces documents-là et je les ai utilisés comme base factuelle pour baser ma critique du professeur St-Lewis dans mon article blog qui lui a mené à l'action en diffamation.

15 LE TRIBUNAL: D'accord.

20 M. RANCOURT: Et puisqu'on est sur ce sujet des documents d'accès à l'information, Monsieur le Juge, monsieur Dearden a fait un cas du fait qu'il y avait des courriels d'Allan Rock qui demandent pour les données de madame Gervais, mais Allan Rock c'est le patron de madame St-Lewis. S'il y a des communications entre Allan Rock ou l'Université et madame St-Lewis dans les deux sens, ça devrait être découvert et rien de ça ne m'a été donné.

25 Absolument rien. Donc ces documents sont déjà des choses que l'Université et la plaignante devrait avoir et....

30 MR. DEARDEN: Your Honour, Allan (ph) Rock can write the e-mail like he wrote that doesn't have Professor St. Lewis in the CC or the to line...

M. RANCOURT : Monsieur Dearden, je ne pense pas que vous avez le droit d'intervenir.

MR. DEARDEN: ...and so he is making up evidence and I object to it. He's making up evidence.

M. RANCOURT: Je dis simplement....

MR. DEARDEN: And suggesting again that we didn't produce everything and Justice Smith has ruled that all productions were adequately done by Professor St. Lewis.

M. RANCOURT: Je pense que monsieur Dearden ne va pas contester le fait qu'aucun de ces courriels m'ont été produits.

LE TRIBUNAL: Continuez.

M. RANCOURT: Okay. Donc ça c'était - c'était pour montrer à quel point ce n'est vraiment pas pour accéder aux documents, c'est pour une autre raison.

MR. DEARDEN: What are you talking about?

M. RANCOURT: Monsieur Dearden - là je change un peu de sujet - monsieur Dearden a dit que «litigation privilege» et il l'a répété plusieurs fois, ne s'applique que quand on contemple un litige, mais qu'une fois qu'on est dans le litige, ça s'applique plus du tout. Avec tout respect, j'aimerais suggérer que c'est complètement faux et d'ailleurs, monsieur Dearden nous a pointés à aucune autorité, aucun paragraphe dans une autorité qui prétend une telle chose. En fait, c'est le contraire. Ce matin, je vous ai lu une autorité de la Cour d'Appel dans lequel on explique que pendant le processus, on a droit à cette zone privée et en faite, ça va plus loin que ça. On a le droit à cette zone privée à partir du moment où on contemple de faire un litige.

5 Ça n'exclue pas le procès lui-même; ça n'exclue pas les motions au préalable. C'est, si je peux me permettre, c'est farfelue d'avancer une telle chose. Il n'y a aucune - monsieur Dearden nous a pointé aucune autorité. Il a simplement affirmé et dans son factum et oralement devant nous une chose qui m'apparaît farfelue. C'est incroyable. Alors ça je veux le signaler.

10 Je pense que si vous réexaminez l'autorité et de la Cour Suprême et de la Cour d'Appel que je vous ai lue ce matin, il est très clair que «litigation privilege» s'applique pendant le processus et permet une zone sécuritaire et privée à la personne en litige.

15 LE TRIBUNAL: Oui.

20 M. RANCOURT: Okay? Et ensuite, vous avez eu raison, Monsieur le Juge, quand vous avez signalé, quand monsieur Dearden pointait à un factum ou sois disant j'accusais la plaignante d'avoir dit des faussetés, vous avez eu raison de pointer qu'il y a deux factums différents: il y a le factum de ma motion de refus pour les examens au préalable et ensuite, il y a mon factum de réponse contre la motion de refus de la plaignante contre les refus de madame Gervais.

25 C'est le premier de ces factums qui établie la raison de l'affidavit de Mireille Gervais, et c'est uniquement dans le premier factum, c'est-à-dire la motion de refus sur les examens au préalable, où j'ai amené cet affidavit et où j'ai essayé de l'utiliser pour avoir une réexamination (sic).

30

5 L'affidavit ne soutient pas ma réponse dans la deuxième motion de refus. Il ne s'agit plus de l'affidavit à ce moment-là. Il - excepté que ça fait partie du processus, mais ce n'est pas un affidavit. Il n'a pas été mis comme affidavit qui soutient la motion.

10 Donc, l'affidavit de Mireille soutient, si on veut, j'espère que c'est le bon mot, soutient ma motion de refus suite aux examens au préalable. Et le but de mon affidavit était de montrer qu'il y a des choses qui ne tournent pas rond et que donc, je dois - je dois trouver la vérité par rapport à ces choses-là et examiner la plaignante qui a toujours indiqué le contraire, mais que maintenant je sais que je dois l'examiner là-dessus et en fait, j'ai des bonnes raisons de l'examiner parce que y'a - y'a des faits contraires. C'était ça le but de mon affidavit, malgré toutes les prétentions de monsieur Dearden.

15 LE TRIBUNAL: Mais vous avez déposé l'affidavit de madame Gervais en défense - comme une défense vis-à-vis la motion présentée par le demandeur pour avoir un deuxième examen de madame Gervais.

20 M. RANCOURT: Non. Non.

25 LE TRIBUNAL: Ah, saint....

30 M. RANCOURT: C'est pour ça que j'ai voulu le ramener sur le tapis. C'est très simple - bien, ce n'est pas très simple, mais c'est simple. Y'a eu des examens au préalable. Y'a eu des refus. J'ai fait une motion de refus. Dans cette motion de refus, j'ai mis l'affidavit de Mireille Gervais, point.

LE TRIBUNAL: Vous avez faite - vous avez déposé une motion...

M. RANCOURT: Oui.

LE TRIBUNAL: ...pour avoir un deuxième examen de la demanderesse.

M. RANCOURT: Oui. Oui.

LE TRIBUNAL: Okay. Est-ce que c'est dans cette motion que vous avez déposé l'affidavit de Madame Gervais?

M. RANCOURT: Oui, oui, oui, oui, oui. C'est ce que j'essaye de dire depuis le début. Et c'est - parce que monsieur Dearden a brouillé les choses, parce qu'il veut parler du deuxième affidavit où là, je fais autre chose.

LE TRIBUNAL: Mais il y a seulement un affidavit de madame Gervais.

M. RANCOURT: Oui.

MR. DEARDEN: What are you talking about?

M. RANCOURT: Je - je - excusez-moi, je voulais dire - je voulais dire un factum, pas affidavit. Je me suis trompé de mot. Excusez-moi. Il y a un seul affidavit de Mireille Gervais.

LE TRIBUNAL: Oui.

M. RANCOURT: Et il a été soumis dans la motion...

LE TRIBUNAL: Par vous.

M. RANCOURT: ...par moi, dans la motion de refus qui suivait les examens au préalable que j'ai fait du témoin - de la plaignante.

LE TRIBUNAL: Non. Non. C'est parce que je ne veux pas - en tout cas. L'affidavit de madame Gervais...

M. RANCOURT: Oui.

LE TRIBUNAL: ...c'était déposé par vous.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay. Sur la motion de qui?

M. RANCOURT: Ma motion.

LE TRIBUNAL: Pour obtenir accès - un deuxième accès...

M. RANCOURT: Oui.

LE TRIBUNAL: ...à madame St-Lewis.

M. RANCOURT: Oui. Exactement. Ça, il faut que ça soit absolument clair. Et quand - alors, vous voyez - vous allez voir la suite - en voyant voir la suite, vous allez comprendre.

LE TRIBUNAL: Puis vous n'avez pas de - cet affidavit n'existe pas sur la motion - la motion - la motion qui était présentée par la demanderesse pour avoir un deuxième accès - deuxième accès à qui? Deuxième accès à madame Gervais.

M. RANCOURT: Bien, y'a pas eu de deuxième - euh, oui.

LE TRIBUNAL: Non, non, non, attendez.

M. RANCOURT: Ah, oui, je comprends. Je comprends.

LE TRIBUNAL: La décision de - en décembre là, la décision qui devant moi aujourd'hui là?

M. RANCOURT: Uh-hmm. Uh-hmm.

LE TRIBUNAL: C'est cette décision de la Juge Smith là, c'était - la Juge Smith a rejeté votre demande d'obtenir - euh, non, non, non.

M. RANCOURT: Non.

LE TRIBUNAL: Non. Le Juge Smith a donné - il a accepté la demande qu'il devrait y avoir - il devrait y avoir un deuxième examen de madame Gervais.

M. RANCOURT: Oui.

5 LE TRIBUNAL: Oui. Puis évidemment, ça c'est le sujet qui devant moi aujourd'hui, mais vis-à-vis cette motion qui était présentée par la demanderesse là, est-ce que quelqu'un a déposé l'affidavit de madame Gervais?

M. RANCOURT: Non.

LE TRIBUNAL: Non.

10 M. RANCOURT: À mon sens, il s'est trouvé dans les documents mais uniquement comme, parce que ça faisait partie de l'historique, mais ce n'était pas un affidavit qui soutenait dans le sens d'évidence, la motion. L'affidavit....

LE TRIBUNAL: Puis...

M. RANCOURT: Oui?

15 LE TRIBUNAL: ...à cause que nous sommes là, j'aimerais faire référence - une seconde - aux deux factums.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay?

20 M. RANCOURT: Uh-hmm.

LE TRIBUNAL: Puis c'est dans le compendium préparé par...

M. RANCOURT: Oui.

LE TRIBUNAL: ...la demanderesse.

25 M. RANCOURT: Alors...

LE TRIBUNAL: Puis c'est à l'onglet 4 puis l'onglet 5.

M. RANCOURT: Je vais vérifier. Je crois que vous avez raison de mémoire, mais je vais vérifier.

30 LE TRIBUNAL: Onglets 4 et 5.

M. RANCOURT: Et 5? Non, 5 c'est - 5, ce n'est pas l'original - euh, okay, 5, c'est....

LE TRIBUNAL: On va commencer avec règle 4 là.

M. RANCOURT: Okay.

LE TRIBUNAL: Octobre, 24. Okay.

M. RANCOURT: On est à l'onglet 4.

LE TRIBUNAL: L'onglet 4.

M. RANCOURT: Oui.

LE TRIBUNAL: Monsieur Dearden nous a dit que -
évidemment, les deux documents viennent de vous, ce
sont vos documents...

M. RANCOURT: Oui.

LE TRIBUNAL: ...mais il a dit que vous avez déposé
ce factum - à l'onglet 4, vous avez déposé ce
factum....

M. RANCOURT: Je m'excuse, Monsieur le Juge, mais à
l'onglet 4, je n'ai pas un factum; j'ai une «motion
record. »

THE COURT: Responding party's factum, ça c'est -
non, non. Moi je fais référence au compendium
qui...

M. RANCOURT: Ah, le «compendium of arguments» de
monsieur Dearden?

LE TRIBUNAL: Compendium of argument»....

M. RANCOURT: Okay. Excusez-moi.

MR. DEARDEN: Evidence.

LE TRIBUNAL: Les faits.

M. RANCOURT: «Evidence»? D'accord.

LE TRIBUNAL: Oui?

M. RANCOURT: Oui.

LE TRIBUNAL: Onglet 4.

M. RANCOURT: D'accord.

LE TRIBUNAL: Okay?

M. RANCOURT: Oui.

LE TRIBUNAL: Monsieur Dearden a dit...

M. RANCOURT: Oui.

LE TRIBUNAL: ...que ce factum...

M. RANCOURT: Oui.

LE TRIBUNAL: ...était déposé par vous sur la motion de la demanderesse pour obtenir un deuxième examen de madame Gervais.

M. RANCOURT: Oui.

LE TRIBUNAL: Est-ce que vous êtes d'accord?

M. RANCOURT: Oui.

LE TRIBUNAL: Ah. Parfait. Il a dit aussi que, à l'onglet 5, que ce factum...

M. RANCOURT: Uhhh, ce n'est pas...

LE TRIBUNAL: ...daté le 9 novembre...

M. RANCOURT: ...non, ce n'est pas un factum à l'onglet 5. Ce sont des...

THE Court: Sorry, les written submissions.

M. RANCOURT: Oui, les soumissions écrites, oui.

LE TRIBUNAL: Oui. Il a dit que ces soumissions-là, ce document par vous était déposé tout de suite après l'argument que vous avez eu avec - devant le Juge Smith, mais c'est sur - encore, c'est sur la motion de madame St-Lewis pour obtenir un deuxième examen de madame Gervais.

M. RANCOURT: Exactement.

LE TRIBUNAL: Merci. Okay.

M. RANCOURT: Et dans ce factum, c'est-à-dire ce deuxième factum à l'onglet 4 de monsieur Dearden, j'ai voulu argumenter que sa motion de refus était faite de mauvais fois, pour des raisons autres qu'une motion de refus authentique, une deuxième motion de refus dans une autre motion de refus,

autre que ça. Et argumentant ça, j'ai dit, pour montrer que y'avait mauvaise fois, j'ai dit:

«Regardez. Il y a des faussetés ici. Il y a un conflit.»

Ça faisait partie de mon argument de mauvaise fois de la deuxième motion de refus.

LE TRIBUNAL: Okay.

M. RANCOURT: Vous comprenez?

LE TRIBUNAL: Oui.

M. RANCOURT: Merci. Okay. Je vais passer - ah oui, y'avait un ou d'autres points très courts que je voulais faire. Ah oui, monsieur Dearden a argumenté qu'on avait le droit d'obtenir toute sorte de documents, qu'on avait le droit à des productions à l'intérieur d'une motion - n'est-ce pas? Et ces arguments étaient basés sur son factum, aux paragraphes 43, 44, par exemple, et aussi 45. Et je veux vous signaler quelque chose de très important par rapport aux arguments de monsieur Dearden. Elle ne s'applique pas pour les raisons que je vais expliquer.

LE TRIBUNAL: Oui?

M. RANCOURT: Par exemple, dans le paragraphe 43, on parle d'un témoin expert. Il est bien établi que dans les règles et dans la jurisprudence, un expert doit fournir tous les matériaux qui servent à l'élaboration de son opinion d'expert. Ce n'est pas contesté ça, mais ça c'est toute une autre affaire que d'une production d'un non-partie. Parce qu'un expert est quelqu'un qui doit être un ami de la

5 Cour, et cetera, on a le droit d'aller chercher ses «drafts», on a le droit d'aller chercher tous les matériaux que l'expert a utilisés. On a même le droit d'aller demander à l'expert à qui il a parlé pour élaborer son opinion, et cetera. C'est bien établi ça. Ça c'est une situation très différente que de demander une production de documents qui sont dans la possession d'une personne non-partie.

10 Alors, vous allez voir que les - ce que cite monsieur Dearden, Ibrahim, (supra) et puis Ahern (ph) etcetera, il est question d'experts témoins.

15 Aussi, au paragraphe 44, quand monsieur Dearden fait allusion à son paragraphe 44 et il cite et il met en caractère gras de choses, il dit:

20 "These questions relate to foundational facts surrounding the affidavit of Mr. Tiffoli (ph). There is no evidence that they are protected by litigation privilege."

...et cetera, n'est-ce pas? Je suis au paragraphe 44 du factum de monsieur Dearden.

25 LE TRIBUNAL: Oui.

30 M. RANCOURT: Ici, monsieur Dearden fait une erreur fondamentale qui est la suivante: on a le droit - et il ne distingue pas aller chercher «foundanational (sic) facts», c'est-à-dire aller vérifier les faits dans l'affidavit, d'où ça vient ces faits. Ça c'est différent que des communications avec le témoin qui elles sont protégées par «litigation privilege».

Donc il confond vérifier les faits avec les communications, qui elles sont protégées par «litigation privilege».

5 Et ensuite, au paragraphe 45, monsieur Dearden répète son erreur par rapport au témoin expert. Toute l'autorité qu'il cite ici, est à propos d'un témoin expert. Il est évident, les règles sont claires, la jurisprudence est claire, un témoin expert, c'est un cas spécial et particulier où on peut aller chercher tout le «background» et on y a le droit et il y a des protections par rapport à ça.

10 Je pense que j'avais un autre ou deux autres points. Je cherche mon document - ah, oui. Non, Monsieur le Juge, je pense que j'arrive à tout ce qui est possible pour moi de faire. Le - les autres choses, les nombreuses choses que monsieur Dearden a dit où à chaque fois je me serais levé et j'aurais dit: «pas tout à fait correct. Pas tout à fait correct. Pas vrai du tout», y'en a beaucoup qui - on n'a juste pas le temps de les couvrir, mais ça c'était je pense les points importants. Oui.

25 LE TRIBUNAL: Merci, beaucoup.

30 THE COURT: Mr. Dearden, I have one question of you. Two points - it involves two points. Do you agree or do you not agree that the Gervais affidavit was filed on the defendant's motion to examine the plaintiff a second time and it was - the affidavit

was not filed on the motion by the plaintiff to examine Ms. Gervais a second time?

MR. DEARDEN: Agree.

THE COURT: I don't know what turns on it, but I hadn't appreciated that. Now, the only other question I have is do I decide this motion or do I wait for the argument of this other motion?

MR. DEARDEN: You can decide this motion, Your Honour. It's Justice Smith that has to decide about whether Professor St. Lewis is to be re-examined.

THE COURT: But Justice Smith has sent his second motion - the March 6th motion, apparently to me.

MR. DEARDEN: Well, he did that because I asked him to...

THE COURT: Right.

MR. DEARDEN: ...because I want it dismissed because he hasn't decided it yet.

THE COURT: All right.

MR. DEARDEN: So that leave to - leave to appeal what? He hasn't decided whether Professor St. Lewis should be re-examined on...

THE COURT: Okay.

MR. DEARDEN: ...her meeting with Gervais...

THE COURT: Okay.

MR. DEARDEN: ...because you haven't decided yet...

THE COURT: Right.

MR. DEARDEN: ...whether my cross-examination can continue.

THE COURT: Okay, and....

MR. DEARDEN: We carved it out.

THE COURT: Right. And it sounds as if the defendant does not want to proceed with that - with argument

of that other motion – the second motion that was scheduled for today pending of the outcome of some appeal or something like this – but he doesn't want to and he – in any event we don't have a date for it and the place to get the date is – presumably is back from Justice Smith.

MR. DEARDEN: That's not what I'm saying, Your Honour.

THE COURT: Okay.

MR. DEARDEN: I'm saying that Mr. Rancourt has stubbornly refused to admit that Justice Smith deferred and carved out...

THE COURT: Yes.

MR. DEARDEN: ...that issue.

THE COURT: Right.

MR. DEARDEN: And you have his March 27th endorsement where he put in writing that he deferred it...

THE COURT: Right.

MR. DEARDEN: ...until the cross-examination. So we have a leave to appeal motion here, but Justice Smith said, on my request – I want it put before Justice Kane on April 17th...

THE COURT: Right.

MR. DEARDEN: ...to have it dismissed because it's premature...

THE COURT: Right.

MR. DEARDEN: ...and I'm going to seek – it was really a cost motion – I'm going to seek full indemnity costs against him...

THE COURT: Right.

MR. DEARDEN: ...for refusing to discontinue it...

THE COURT: Right.

MR. DEARDEN: ...as we offered to let him do.

THE COURT: So what I'm saying is what do we do - that's not - that's your argument, but that's not your motion - or is it your motion? I forget.

M. RANCOURT: Non, c'est ma motion.

MR. DEARDEN: Well, it's his motion for leave.

THE COURT: His motion, okay. And so what do you say should be done with that motion?

MR. DEARDEN: I say I wanted to argue it today to have it dismissed because it's premature...

THE COURT: Right.

MR. DEARDEN: ...because - because what he's appealing...

THE COURT: Right.

MR. DEARDEN: ...is that Justice Smith never dealt with this in his...

THE COURT: Right.

MR. DEARDEN: ...reasons of March 6th.

THE COURT: Right. I understand.

MR. DEARDEN: Of course he didn't.

THE COURT: I understand that's your position, but we didn't get to the motion. It has not yet been argued. The motion - the merits of the motion have not been argued, number one. Number two, it sounds as if there's some kind of a preliminary request that that motion - that second motion not proceed. I started off....

MR. DEARDEN: Well, that's from him - from Mr. Rancourt.

THE COURT: It is - it is from Mr. Rancourt and I started off by saying, do I have to wait until that motion is - his motion is dealt with or your

argument in relation to his motion is dealt with in order to decide this motion? Your answer was no, you don't have to.

MR. DEARDEN: Right.

THE COURT: Go ahead and decide this one. And what endorsement, if any, do you say I should be making on this second motion?

MR. DEARDEN: Dismiss it because it's premature. Justice Smith, in his March 27th endorsement, has held that he deferred it until the issues of Gervais' cross were dealt with.

THE COURT: Okay.

MR. DEARDEN: It's for another day. Like, the way I see it, Your Honour, is that what happens, you make a decision.

THE COURT: Right.

MR. DEARDEN: It doesn't matter what you decide.

THE COURT: Yes.

MR. DEARDEN: We have to still argue before Justice Smith...

THE COURT: Right.

MR. DEARDEN: ...whether Professor St. Lewis should be re-examined for discovery based on the Gervais affidavit and whatever cross exists.

THE COURT: Okay.

MR. DEARDEN: See, that's for another day.

LE TRIBUNAL: Puis Monsieur Rancourt, vis-à-vis - parce que c'est votre motion...

M. RANCOURT: Oui.

LE TRIBUNAL: ...quelles sont vos intentions vis-à-vis cette motion?

M. RANCOURT: Mes intentions vis-à-vis cette motion, ça serait - d'abord, si ça avait été décidé par vous, si on avait eu le temps, et cetera, j'aurais fait mon argument...

LE TRIBUNAL: Okay.

M. RANCOURT: ...que monsieur Dearden n'a pas raison, que je ne suis pas du tout d'accord avec ce qu'il avance vis-à-vis cette deuxième motion-là.

LE TRIBUNAL: Oui.

M. RANCOURT: Et j'aurais expliqué qu'il me manque la transcription de la Cour que je n'ai pas - de quand on était devant Justice Smith pour décider cette motion-là, que j'ai besoin de cette transcription parce que je crois - et que c'est dans la décision et que c'est dans la transcription, qu'il y a eu une décision finale et qu'on a complètement pas permis que je réexamine la témoin. Ça c'est ma position. C'est mon argument. J'ai une notice de motion qui explique ça en détails, mais je n'ai pas eu le - et j'avais aussi beaucoup d'évidences que je vous ai - ce matin, je vous ai donné....

LE TRIBUNAL: Oui, mais la question là - y'a seulement une question.

M. RANCOURT: Oui.

LE TRIBUNAL: Parce que Juge Smith a déjà cédulé cette motion pour....

M. RANCOURT: Non, il n'a pas déjà cédulé la motion.

LE TRIBUNAL: Oui, oui, il a cédulé la motion devant moi.

M. RANCOURT: Bien c'est-à-dire, il vous l'a donnée, oui.

LE TRIBUNAL: Oui.

M. RANCOURT: Oui.

LE TRIBUNAL: Non, non, pas seulement à moi, mais aujourd'hui.

M. RANCOURT: Oui, aujourd'hui. Oui.

LE TRIBUNAL: Okay. Puis - mais la preuve, comme vous avez mentionnée, ce n'est pas prêt, ce n'est pas présenté.

M. RANCOURT: Non.

LE TRIBUNAL: Alors, quel - si moi je dis okay, alors c'est 5h30 là, on va procéder avec votre deuxième motion. Quelle est votre position?

M. RANCOURT: Ma position, c'est que je vais argumenter pourquoi on ne peut pas procéder aujourd'hui et je vais me baser sur des - les raisons qui sont données dans ma «confirmation of motion», pour expliquer pourquoi on ne peut pas procéder aujourd'hui.

Et aussi, nous avons fait des arguments détaillés devant Justice Smith et je pense que Justice Smith, avec - avait eu le - la sagesse de dire dans son «endorsement»: «Je laisse ça à la discrétion du Juge Kane ou de celui qui aura la motion, à décider si ça doit être retardé à plus tard». Il n'a pas dit si ça doit être enlevé, «dismissed» comme on dit en anglais, il a dit: «Si ça doit être mis à plus tard, à une date qui serait agréable aux deux parties» et je vous ai lu ça ce matin. Et donc, moi, à partir de ça, je suis venu préparer pour expliquer les circonstances que j'ai déjà expliquées au Juge Smith, mais il voulait donner une chance à ce que vous l'entendiez, je ne sais pas quoi, mais moi, je

suis prêt à argumenter que non seulement ça doit être fait un autre jour...

LE TRIBUNAL: Mais?

M. RANCOURT: ...non seulement ça doit être fait un autre jour, mais je dois - on doit me donner le temps de soumettre mes matériaux pour cette motion. On doit me donner le temps de préparer mon «motion record», mon factum et mon livre des autorités. C'est ce....

MR. DEARDEN : You were ordered - you were ordered to do that April 4th and you ignored the order. It's very unfair what he's saying to you, Your Honour.

M. RANCOURT: Monsieur le Juge, est-ce que monsieur Dearden a le droit de faire de telles interventions? Je - je - j'ai dit en écrit au Juge Smith: «Vous me dirigez de faire quelque chose qui est impossible et voici les raisons que c'est impossible...», et il a tenu à garder votre discrétion pour répondre à cette question-là. Y'a toute une correspondance avec le Juge Smith qui est dans ce «confirmation of motions» qui a des onglets jusqu'à (g) et ça c'est ma position, que j'ai besoin de plus de temps et que moi - moi, je pense, Monsieur le Juge, que la meilleure chose serait d'avoir une conférence sur la cause, de reparler de ces questions-là et de choisir des dates qui seraient réalistes et convenables aux deux parties.

LE TRIBUNAL: D'accord. Merci, beaucoup.

M. RANCOURT: Oui. J'ai aussi reçu récemment - je m'excuse, j'ajoute un p'tit mot, j'ai reçu juste hier le numéro de dossier de la Cour suprême du Canada pour une autre partie de cette action. Et

donc, j'aurais besoin de faire des choses par rapport à ça aussi. Je peux vous donner une copie de cette lettre du registraire de la Cour suprême du Canada, si vous voulez.

LE TRIBUNAL: Pourquoi est-ce que c'est pertinent pour moi?

M. RANCOURT: Juste si on décidait d'avancer, c'est pertinent, parce que c'est pour dire que je n'ai pas le temps.

LE TRIBUNAL: Que vous n'avez pas?

M. RANCOURT: Le - que j'ai besoin suffisamment de temps pour préparer mes matériaux pour cette prochaine motion. En d'autres mots, qu'il y a beaucoup de demandes sur mon temps dans cette affaire. Je n'ai....

LE TRIBUNAL: Merci beaucoup.

M. RANCOURT: Okay.

LE TRIBUNAL: Merci. Je ne peux pas donner une décision aujourd'hui, alors je vais la donner aussi vite que possible. Merci beaucoup.

C O U R T A D J O U R N E D

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Linda A. Lebeau, certify that this document is a true and accurate transcript of the recording of St. Lewis v. Rancourt in the Superior Court of Justice, held at 161 Elgin Street, Ottawa, Ontario taken from Recording No. 0411-13-20130417-2 which has been certified in Form 1.

JUN 28 2013

Date

Linda A. Lebeau

Linda A. Lebeau

SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

P R O C E E D I N G S

BEFORE HIS HONOUR JUSTICE ROBERT SMITH
on May 6, 2013, at Ottawa, Ontario

APPEARANCES:

R. Dearden
D. Rancourt

Counsel for the Plaintiff
In Person

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1.
St. Lewis v. Rancourt

MAY 6, 2013

MR. DEARDEN: Good morning, Your Honour.

THE COURT: Good morning. Bonjour. So, what can I do for you all this morning?

MR. DEARDEN: Your Honour, I....

M. RANCOURT: M. le juge.

MR. DEARDEN: Your Honour, I have....

LE TRIBUNAL: Qu'est-ce que je peux faire pour vous autres?

M. RANCOURT: Bien moi, j'avais envoyé une lettre expliquant quatre choses que je voulais....

MR. DEARDEN: No, excuse me. Excuse me. Your Honour, I'm the one who wrote and requested this case conference.

THE COURT: M. Rancourt also asked for one.

M. RANCOURT: Oui, tout à fait.

LE TRIBUNAL: C'était qui qui est en premier? Who was first?

M. RANCOURT: Mais M. Dearden était en premier mais il a demandé un seul item qui allait durer 15 minutes, et ensuite, je pense le même jour ou le jour après, j'ai demandé quatre items qui devraient être discutés.

LE TRIBUNAL: Bien, vu que M. Dearden - il va être plus court - plus court, plus courte - je vais entendre M. Dearden en premier, là je vais vous entendre.

M. RANCOURT: D'accord. Mais je vais juste signaler que l'item de M. Dearden évidemment peut pas être vu séparément des autres items parce que il s'agit de l'utilisation du temps.

LE TRIBUNAL: Okay, bien, premièrement peut-être qu'on peut identifier les items. What are the items...

MR DEARDEN: Yes, that's what I was going to do.

THE COURT: ...for today?

M. RANCOURT: Alors les items que j'avais mis dans ma lettre....

MR DEARDEN: No, no, Mr. Rancourt, Your Honour, can I....

THE COURT: Let me hear you suggest what your item is, and then I'll hear M. Rancourt on what he suggests.

M. RANCOURT: D'accord.

LE TRIBUNAL: Et là, je déciderai qui va aller en premier. C'est ça? C'est ça la dispute ici vraiment?

M. RANCOURT: Merci beaucoup.

LE TRIBUNAL: Je comprends vous vous entendez pas sur beaucoup de choses. I understand you don't agree on many things, if anything. But anyway. Let's go, what do you say, Mr. Dearden, are the issues for the case conference?

INTERPRETER: Your Honour, just for the record, the interpretation is not being captured and the interpreter is not clear as to whether it should be. Just as a result there won't be any transcript of the translation. Any....

THE COURT: There will be the original...

INTERPRETER: Spoken word.

THE COURT: ...spoken words are being captured.

MR. DEARDEN: That's fine with me, Your Honour.

LE TRIBUNAL: D'accord, bon.

M. RANCOURT: Tout à fait, tout à fait.

LE TRIBUNAL: Puis la traduction, vous ferez, tu fais pour Me Dearden surtout. Okay.

MR. DEARDEN: And Your Honour,...

M. RANCOURT: Est-ce que l'interprète a été assermenté, M. le juge?

LE TRIBUNAL: Non, c'est un bon point. We'll swear the interpreter.

DANIEL RENAUD: AFFIRMED AS INTERPRETER - French/English

THE COURT: Okay, Mr. Dearden, what issues?

MR. DEARDEN: Your Honour, thank you. I requested a case conference be held today so that a date could be set for Mr. Rancourt's continued examination for discovery, as you ordered in your March 6th reasons on compelling him to answer a number of questions. And, in addition, to produce to me all the documents that were listed in a notice of examination I served him to be - for the continued examination to occur on April 19th which he refused to show up for.

So, I want to deal with that, set a date for the continued examination for discovery, and to have him produce the documents that we listed in the Notice of Examination, as well as some of the written responses that he's given to your order requesting having him answer questions. He's listed documents in some of the written answers he's provided as well.

I want all those documents before I re-examine him, obviously. I don't want them produced the day of the re-examination and then have to come back. So that is the first item

before you today, Your Honour. And my assumption, by the way, is that we're not going past 11 o'clock today.

THE COURT: That would be the intention - ça ça sera là - should be. We should be able to.

MR. DEARDEN: The second item, Your Honour....

MR. RANCOURT: Je suis d'accord que ça devrait prendre environ une heure.

THE COURT: Okay.

MR. DEARDEN: The second item, Your Honour, is Mr. Rancourt has not filed the costs submissions on your *Champerty* motion which you ordered him to file in your March 27th case management endorsement, and I brought a copy of that, Your Honour. He's just ignored that deadline.

THE COURT: I think I've received two costs submissions.

MR. DEARDEN: That was the discoveries.

THE COURT: Okay.

MR. DEARDEN: He was to put three costs submissions according to paragraph, I believe, 7 of your March 27th case management endorsements, and two of them were on the discovery refusals motions, and then the third one was the *Champerty* motion. He hasn't done that and it's going to be my position and Mr. Doody, who can't be here today, because part of this deals with the *Champerty* motion, has authorized me to join in my submission that that deadline has been breached, and you can issue your decision on costs now.

He can't flaunt orders. This was not a suggestion. In paragraph 7 of your March 27th

order, it was....

MR. RANCOURT: M. le juge, juste pour clarifier. On - je crois - je croyais qu'on allait entendre les items, et décider des items pour la journée. M. Dearden est en train de faire des arguments par rapport à son item.

LE TRIBUNAL: Okay. Merci.

MR. DEARDEN: And the third matter, Your Honour, is Mr. Rancourt has also breached another part of your March 27th case management endorsement where you ordered him to file his materials in his motion for leave to appeal which involves the - his request to re-examine Professor St. Lewis with respect to the date that she met Ms. Gervais. And that date would have been April the 4th to file his materials, and he never did. So that's the third matter.

THE COURT: If someone doesn't follow any of my orders, then the consequences will - that'll be for the judge hearing the leave to appeal. Does it violate....

MR. DEARDEN: I agree with that, Your Honour. I agree with you.

THE COURT: You know, so that I'm not going to get - that'll be for whoever it is that hears leave to appeals.

Il y a pas de documents. There's no documents. Well, so be it. I'm not going to re-issue orders,...

MR. DEARDEN: I agree, Your Honour.

THE COURT: ...or repeat a second time to file it. If someone chooses not to file - and I have

5 a similar idea on the costs submissions, subject
to hearing from M. Rancourt. I mean, and I must
admit, going back to discovery - well if we can -
let's discuss that, I'll hear from M. Rancourt if
there's a convenient date, but there's also a
procedure. You serve him and if he doesn't
attend you get a certificate of non-attendance
and move to strike a defence. I mean that's - ça
c'est les conséquences. Il y a - on agit pas
10 pour suivre les ordonnances, but I don't have to
say this, I don't suspect to - Mr. Dearden is
aware of that.

Okay. And what do you say the issues - Selon
vous, les questions aujourd'hui sont les....

15 M. RANCOURT: Alors, pour moi, aujourd'hui il y a
quatre points. M. Dearden a déjà parlé de son
désir de réexaminer, d'établir une date pour
cela. Je suis d'accord que ça c'est un des
points qu'on doit discuter.

20 LE TRIBUNAL: C'est lequel, là? Ça c'est?

M. RANCOURT: Ça c'est le premier point: établir
une date pour réexaminer pour les découvertes,
c'est-à-dire l'examen au préalable. Ça c'est le
premier point.

25 Le deuxième point, j'aimerais - et ça j'ai
présenté par lettre des arguments. En fait, une
des raisons que j'ai demandé la session
aujourd'hui, c'est pour justement établir un
nouveau deadline pour faire les soumissions des
coûts par rapport à la motion de champartie. Je
vous ai écrit plusieurs lettres, M. le juge, en
expliquant les raisons que j'ai pas pu rencontrer
30

5 votre deadline que j'ai - j'avais toute l'intention de rencontrer mais c'était une impossibilité, et donc j'aimerais discuter de cette question-là et de clarifier mes raisons que j'ai pas pu rencontrer ce deadline.

10 Ça c'est donc le deuxième point, c'est par rapport à établir une nouvelle date pour les soumissions par rapport aux coûts dans la motion de champartie. D'accord? Et le - mon troisième point c'est la question de ma non-disponibilité en mai et juin. Et je vous ai déjà donné une lettre de mon syndicat. J'ai amené aujourd'hui avec moi une nouvelle lettre qui supplémente cette première lettre, et c'est pour expliquer
15 que, à partir de maintenant, je dois avoir tout mon temps pour me concentrer sur mon cas où j'ai été congédié de l'université d'Ottawa. C'est depuis deux ans que c'est en tribunal, et c'est en mai et juin que le procès se décide, et j'ai besoin d'être tout à fait disponible, et je vais vous montrer les lettres en question dans quelques instants, et ça c'est le troisième point que j'aimerais discuter.

20 LE TRIBUNAL: Okay, bon.

25 Et puis, un quatrième point.

LE TRIBUNAL: Un quatrième, oui.

30 M. RANCOURT: Oui, un quatrième point que j'aimerais discuter c'est par rapport à ma demande d'aller en appel de votre décision dans la motion des refus en découverte, justement là où je n'ai pas eu le temps de soumettre les matériaux. M. Dearden vient d'en parler.

LE TRIBUNAL: Oui, mais ça c'est - moi, j'ai rien à faire avec - si un appel d'une de mes décisions, vous avez le droit de le faire, mais, moi je ne suis pas impliqué de quelque manière.

M. RANCOURT: Oui, j'aimerais juste clarifier, M. le juge. Vous avez - vous êtes impliqué par rapport à céder des dates pour ces motions-là? Si je comprends bien?

LE TRIBUNAL: Mais vous parlez de champartie?

M. RANCOURT: Non. Là je parle....

LE TRIBUNAL: Ça c'est la Cour d'appel. Ça je ne suis pas impliqué d'aucune façon.

M. RANCOURT: Non, M. le juge, je suis en train de parler d'une motion qui n'a pas été entendue encore.

LE TRIBUNAL: Une autre motion?

M. RANCOURT: Qui est - non, c'est - elle n'est pas nouvelle.

MR. DEARDEN: Which motion?

M. RANCOURT: Vous la connaissez, je vais le dire tout de suite. C'est la motion pour aller en appel à la Cour divisionnelle de votre décision que vous connaissez déjà là, c'est votre décision dans ma motion des refus en découverte. C'est dans ma motion de refus dans les découvertes. Je suis allé en appel de votre décision sur cette motion-là comme vous le savez.

LE TRIBUNAL: Okay.

M. RANCOURT: Et vous avez indiqué que cette motion devrait être entendue le 17 avril.

LE TRIBUNAL: La même date. J'avais mis ça sur la même date...

M. RANCOURT: Exact.

LE TRIBUNAL: ...que l'autre motion pour....

MR. RANCOURT: Exact. Et je me suis objecté à ça, mais ça c'est un détail. Mais le juge Kane n'a pas entendu la motion, et n'a - a choisi de ne pas recéduler la motion. Et il m'a suggéré d'amener ça en conférence pour la cause pour cédule une nouvelle date. Et c'est pour ça que je suis là. Et j'ai commandé le procès-verbal si M. Dearden n'est pas d'accord, mais il a été clair - il n'a pas pris une décision, et il m'a suggéré ça. J'en ai parlé, il m'a demandé pourquoi, j'ai dit je vais le faire le plus tôt possible. Et donc, à mon sens, on a besoin de cédule une nouvelle date pour cette motion, et pour me donner le temps de soumettre les matériaux pour cette motion.

MR. DEARDEN: No.

M. RANCOURT: Parce que je n'ai pas eu le temps, et donc je demande une date pour soumettre mes matériaux que j'ai absolument pas eu le temps de faire, pour toutes les raisons que je vous ai expliquées maintes fois dans mes lettres à vous, M. le juge. Je n'ai pas eu le temps de faire ces soumissions-là. Je veux, donc, une date raisonnable pour faire ces soumissions, et ensuite une date pour que la motion soit entendue.

LE TRIBUNAL: Okay. Premier item. La date pour continuer les examens au préalable pour M.

Rancourt. Est-ce qu'il y avait une cinquième?

M. RANCOURT: Oui. Il y avait juste quatre

principales, mais j'ai une autre demande, et je voudrais aussi parler, je ne sais pas si c'est trop tôt, mais éventuellement il va falloir parler, parce que moi je suis pas au courant comment ça marche, mais on arrive à la fin là de ces motions-là, et il va falloir parler de ce qu'on appelle "pretrial", que je ne connais pas, et puis comment....

LE TRIBUNAL: Okay, pretrial, vous êtes - vous êtes....

M. RANCOURT: Comment on sélectionne un jury. Moi je ne sais pas du tout comment ça se passe. Mais il va falloir éventuellement parler de ça.

MR. DEARDEN: Sorry, Your Honour, I didn't - just a translation clarification. I'm not understanding what he's asking for.

THE COURT: I think information about a pretrial procedure but he's - I think - adding a jury selection process. I'm not sure. But there will be a pretrial. Il va en avoir un pré-procès.

M. RANCOURT: Oui.

LE TRIBUNAL: Conférence de règlement, ce genre, mais ça serait une très bonne idée, si tôt possible, mais il faut...

M. RANCOURT: Moi, je vois....

LE TRIBUNAL: ...compléter les examens au préalable, prochaine étape c'est une date de pré-procès, oui. Donc, je vais l'arranger, dès que - mais d'habitude on doit être prêt avec les informations nécessaires pour régler parce que - donc d'habitude on complète les examens au préalable.

MR. DEARDEN: Your Honour,...

M. RANCOURT: D'accord.

MR. DEARDEN: ...he has a leave application before the Supreme Court of Canada. He has an appeal of your *Champerty* decision before the Court of Appeal. He has leave to appeal motions to the Divisional Court. We are unfortunately far away from pretrial conference.

THE COURT: Pretrial, I don't think we're - je crois pas qu'on est prêt ou proche à cette....

M. RANCOURT: Oui, donc je suis heureux qu'on clarifie qu'on ne peut pas faire ça au même temps, et donc je suis d'accord qu'il faut d'abord que la Cour d'appel se prononce, que la Cour suprême se prononce, et ensuite qu'on poursuive avec ces questions-là.

Mais, M. le juge, quand - les quatre premiers items que j'ai mentionnés aujourd'hui, j'aimerais faire la demande suivante.

LE TRIBUNAL: Non. On va - premièrement on va aller avec l'ordre.

M. RANCOURT: Oui, c'est par rapport à l'ordre que je veux parler.

LE TRIBUNAL: Okay. Mais je vais aller - vous êtes d'accord que, pour fixer une date pour compléter vos examens au préalable, vous êtes d'accord avec ça, les deux? C'est votre point un, on va fixer ça premièrement.

M. RANCOURT: Justement, M. le juge, si vous pouvez me donner 20 secondes....

LE TRIBUNAL: Puis, aussi les documents qui suivent, ça j'imagine que vous n'avez pas

d'objection à fournir les documents que vous avez fait référence?

M. RANCOURT: Si je peux avoir 20 secondes, M. le juge, pour expliquer quelque chose avant de commencer ce processus.

LE TRIBUNAL: 20 secondes?

M. RANCOURT: Alors, voici. Aujourd'hui on a quatre choses qui risquent de donner des dates, et moi je demande...

LE TRIBUNAL: Quatre, cinq, six – peut-être six, mettons. Trois de Me Dearden, et il y en a un c'est la même chose entre – deux c'est la même chose.

M. RANCOURT: Bon, il y a quatre ou cinq choses qu'il faut régler des dates. Moi, ce que je demande, c'est qu'on – quand on va choisir la première date, que j'aie le temps d'accomplir les choses avant cette date-là, puis que la deuxième date soit après, pas au même temps.

LE TRIBUNAL: Okay, bien, je vais entendre chaque item. Premier item. Okay, vous êtes – vous avez la parole.

M. RANCOURT: Merci.

LE TRIBUNAL: Donc, vous proposez quelle date pour compléter vos examens?

M. RANCOURT: Alors, j'ai la parole. Je veux vous passer cette lettre de mon syndicat qui....

LE TRIBUNAL: Okay, donc, selon vous c'est pas avant le mois de juillet, c'est ça?

M. RANCOURT: C'est ça. Et je vais quand même vous passer cette lettre, M. le juge...

LE TRIBUNAL: Donc, vous proposez....

M. RANCOURT: ...qui est une nouvelle lettre du 25 avril.

LE TRIBUNAL: Non, j'ai - je crois j'ai déjà vu une copie.

M. RANCOURT: Non.

LE TRIBUNAL: Okay, c'est....

M. RANCOURT: Cette lettre vous ne l'avez jamais vue.

LE TRIBUNAL: Okay, okay.

M. RANCOURT: C'est une nouvelle lettre.

LE TRIBUNAL: Oui, okay. Mais vous proposez quelle date? Juillet? Fin de juin? Pour compléter vos examens au préalable que vous avez déjà passé l'année dernière. Ça, donc, c'est pas nouveau ça - c'est pas ça se traîne, mais ça dure depuis des mois et des mois.

M. RANCOURT: D'accord. Alors je propose, étant donné ce qui est écrit dans cette nouvelle lettre que je viens de vous donner, qui bloque entièrement mai et juin, je propose donc - parce que les examens au préalable, vous voyez, c'est beaucoup de questions que je dois répondre mais qui impliquent des recherches de documents,...

LE TRIBUNAL: Non.

M. RANCOURT: ...la production de documents.

LE TRIBUNAL: Non, non, non, non. Ça ça implique - ça c'est des réponses, que si vous avez connaissance, vous devriez les répondre. C'est pas des questions compliquées, la plupart.

M. RANCOURT: Je peux vous donner des exemples, M. le juge.

LE TRIBUNAL: Donc - mais, de toute façon, quelle

date vous proposez au mois de juillet, c'est ça?
M. RANCOURT: Moi je propose la fin juillet, je
proposerais la fin juillet.

LE TRIBUNAL: Non, au début de juillet. Ça c'est
pas - ça c'est - si c'était question de est-ce
qu'on va passer aux mois de mai et juin, ça c'est
une grosse question, selon vous, mais pas la fin
de juillet, ça je ne suis pas d'accord que vous
pouvez retarder cette procédure de cette manière-
là. Ça fait trois mois. Les deux mois, je n'ai
pas entendu Me Dearden, le prochains deux mois
vous avez votre affaire avec le syndicat puis
l'université.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est un argument que - est-ce
que vous devrez avoir - quand vous avez des
choses à faire, il faut les faire, mais, de toute
façon, au 1er juillet, what date?

M. RANCOURT: Alors, c'est impossible....

LE TRIBUNAL: Pas la fin de juillet - no....

MR. DEARDEN: Obviously I'm objecting, Your
Honour.

THE COURT: I understand you're objecting.

M. RANCOURT: D'abord le 1er juillet c'est la
journée du Canada. C'est le Canada Day, le 1er
juillet.

THE COURT: Oui.

M. RANCOURT: On va mettre ça au clair tout de
suite. Mais je suis - si vous prenez le temps
de....

LE TRIBUNAL: Ça devient ridicule, à un moment
donné. On veut pas que le système devient

ridicule...

M. RANCOURT: M. le juge...

LE TRIBUNAL: ...avec des délais de même, un autre trois mois, quand vous avez déjà passé, puis il y a déjà des ordonnances, ça c'est pas une bonne approche.

M. RANCOURT: Ce n'est pas ridicule que j'ai besoin de mai et juin. C'est....

LE TRIBUNAL: Ça, je n'ai pas dit ça.

M. RANCOURT: Okay. Et étant donné que j'ai besoin du temps pour préparer les documents, parce que...

LE TRIBUNAL: Non. Ça c'est examens au préalable. C'est - Monsieur, vous avez eu combien de temps? Un an? Déjà vous avez passé au mois de - c'est quoi la date que vous avez eu vos examens au préalable?

MR. DEARDEN: April 30th, 2012.

LE TRIBUNAL: 12.

MR. DEARDEN: A year ago.

LE TRIBUNAL: A year ago. Vous avez eu déjà un an. Donc ça c'est un an puis encore un autre trois mois. Ça devient - comme j'ai mentionné, c'est pas raisonnable. Il faut que ça soit raisonnable pour aller devant avec ce procès, d'avoir un préprocès, conférence de règlement puis un procès, à un moment donné, ça c'est le but, donc il faut...

M. RANCOURT: Oui.

LE TRIBUNAL: ...pas retarder ça.

M. RANCOURT: Mais le procès, on vient de le dire, il est loin, donc...

LE TRIBUNAL: Oh, je ne sais pas si c'est....

M. RANCOURT: ...le - l'autre partie n'a....

LE TRIBUNAL: Je n'ai pas dit ça.

M. RANCOURT: N'a pas de pré....

LE TRIBUNAL: Moi j'ai pas dit c'était loin.

M. RANCOURT: Il n'y a pas de préjudice.

LE TRIBUNAL: C'est Me Dearden qui a dit c'était loin.

M. RANCOURT: Bien, il y a la Cour d'appel, il y a la Cour suprême du Canada, les deux choses sont en processus maintenant. Et, donc, il y a pas de question que ça va se passer tout de suite. On a un peu de temps. Il y a pas de préjudice contre l'autre partie.

LE TRIBUNAL: Okay. Première date vous êtes disponible au mois de juillet?

M. RANCOURT: Moi, j'insiste pour que ça soit pas avant le 15 juillet.

LE TRIBUNAL: Puis pourquoi?

M. RANCOURT: Parce que je vais être complètement pris les deux prochains mois, commençant aujourd'hui, et ensuite M. Dearden demande des documents d'avance. Je vais pas produire des documents d'avance pendant que je suis occupé avec l'arbitrage. Absolument pas question. C'est beaucoup de documents, et qui sont à produire d'avance. Vous pouvez regarder sa notice d'examination. Je ne sais pas combien de pages de documents qu'il veut d'avance, mais c'est très considérable. Et c'est impossible de faire ça. D'ailleurs, vous n'avez pas ordonné que les documents soient donnés d'avance. C'est

M. Dearden qui demande quelque chose de nouveau, que les documents soient donnés d'avance.

MR. DEARDEN: It's not true, Your Honour.

M. RANCOURT: C'est tout à fait vrai. Il y a pas eu d'ordre de documents d'avance. Il y a eu un ordre de les produire, et ensuite une réexamination. Pas de produire des documents d'avance. Les - d'ailleurs, M. le juge,....

LE TRIBUNAL: Et donc, selon vous, la première date c'est le 15 juillet.

M. RANCOURT: Oui. Je ne peux pas envisager le faire avant le 15 juillet. Et je ne vois pas pourquoi on se battrait à quelques jours quand moi je dis, j'ai pas le temps au-delà de ça.

Mais j'ai toute l'intention de répondre pleinement à ces questions-là, et d'ailleurs, M. Dearden est au courant - je vais vous montrer quelque chose.

LE TRIBUNAL: Donc, puis les documents, ça doit être fourn....

MR. DEARDEN: Your Honour...

THE COURT: Yeah?

MR. DEARDEN: ...can we deal with the date first,...

THE COURT: Okay.

MR. DEARDEN: ...and then get into the productions,...

THE COURT: ...Okay.

MR. DEARDEN: ...because I need to go on record here, Your Honour, if I could.

As we've already mentioned, Mr. Rancourt was examined for discovery April 30, 2012, a year

5 ago. He could have showed up April 19th. He could have. No, no. He writes me and refuses to show up, says he's not going to show up. I'm not going to waste time and money by taking out a certificate. I asked for a case conference. That's the way I approached it, Your Honour. I know I could have taken out a certificate. He would have brought another motion to quash it. We would have been wasting more court time.

10 But here's - here's the problem Your Honour. You've heard Mr. Rancourt say, "I can't do..." - please sit down, please sit down - okay, I'm making submissions. Mr. Rancourt says, "Oh, I gotta spend every waking moment of my life" - the last time he said that to you, Your Honour, you know what he was doing? He was writing a book on racism that got published on January of this year.

20 He has counsel representing him in the labour grievance. He has counsel. It's - this letter is from legal counsel. He's not spending every waking moment to appear for one day to answer my follow-up questions on the questions you ordered him to answer.

25 Now, Your Honour there's another very important fact of urgency here. Professor St. Lewis had to go on a leave of absence this term from teaching at the law school, because of, in my submission - Mr. Rancourt will disagree with this - his - the way he's conducting his defence, the things he says, and he continues to say defamatory things in his recent cost submissions,

30

5 he was saying this libel action isn't about reputation, it's about Professor St. Lewis's ego. It goes on and on and it's extremely stressful to Professor St. Lewis. It is harming her. She had to stop teaching this term because of this defendant's actions. And Your Honour, what I want to do is get one step closer to being able to ask for a pretrial conference.

10 And Mr. Rancourt - I've heard him a couple of times say this morning - because he thinks, "Oh no, we gotta have a decision of the Supreme Court of Canada" on his leave application on the apprehension of bias issue. And we've got to have a decision from the Court of Appeal of which, of course, if he loses he'll seek leave to appeal to the Supreme Court of Canada, i.e. "I, Mr. Rancourt, am going rag this puck for years before we ever get to trial."

20 But my position, Your Honour, is I can ask for a pretrial conference and I can ask for dates of trial, and he's going to need a stay. He's going need an order to stay that trial from occurring. And let him to try. So we are a lot closer to trial than he thinks. My submission is, I need to get his examination for discovery done. Professor St. Lewis's examination for discovery is done, but for the "Gervais" issue, as I will call it, okay, which is before Justice Kane right now. But these delay tactics on Mr. Rancourt to come to the Court today to say, "I can't be examined for discovery again until July 30th" is preposterous.

5 He has counsel, Your Honour. And the dates that I'm proposing are May 21st to 24th, May 31st, or the week of June 3 to 7. Like, this has to get finished. I have a whole bunch of other things to say about the production of documents submissions he made, but we need to set a date in May - we should be setting a date in May.

10 M. RANCOURT: M. le juge, vous avez entendu M. Dearden dire toutes sortes de choses très préjudiciables.

LE TRIBUNAL: Non, non. Je parle des dates. Je parle des dates, pour compléter....

15 M. RANCOURT: Vous avez écrit plein de notes, mais je trouve ça - je veux répondre parce que je trouve ça déplorable ce qu'il dit.

LE TRIBUNAL: Non. Non, non, non. Je veux qu'on parle du date et la réponse pourquoi vous pouvez pas le faire mettons au mois de juin, le 3 et la - au 7. Mettons au 3 au 7 de juin.

20 M. RANCOURT: Je veux faire un commentaire qui est relié à ce courriel de M. Dearden, que j'ai envoyé à M. Dearden. Il parle de son client, qui est en pause maladie. Il a...

LE TRIBUNAL: Non, non, non, non.

25 M. RANCOURT: ...fait - non, non - il a fait aucune...

LE TRIBUNAL: Ça c'est pas à moi décider.

30 M. RANCOURT: Mais il m'a donné aucune preuve de ça, aucun document. On a fait découverte, et j'ai rien eu de ça.

MR. DEARDEN: You don't believe it? You don't believe it, Mr. Rancourt?

THE COURT: Okay.

M. RANCOURT: C'est pas une question de pas croire. C'est que...

MR. DEARDEN: Yeah. We told you. We informed you.

M. RANCOURT: ...il y a des obligations - il y a des obligations à découverte. Et si ils vont avancer de telle chose, je dois voir les documents qui se relie à ça. Il n'y en a pas de documents. Il n'y a rien.

THE COURT: But that's not something - c'est pas quelque chose que moi je fais affaire avec ici. Donc, moi c'est de gérer la cause pour avoir des dates pour ça déroule, donc, pour compléter les choses. Donc, dès que vous êtes complété, ils va y en avoir un préprocès. C'est peut-être pas si long - vous avez dit c'est long dans le futur, mais pas nécessairement, parce que moi j'ai l'intention....

M. RANCOURT: C'est M. Dearden qui a dit ça, c'est pas moi, mais....

LE TRIBUNAL: Mais moi j'ai aussi dit que j'étais pas d'accord, parce que moi j'ai l'intention que ce processus, ça se déroule dans une manière raisonnable, et pas des délais déraisonnables. Donc, vous comprenez? Vous comprenez?

M. RANCOURT: Alors, revenons - revenons à la question.

LE TRIBUNAL: Et ça c'est mon rôle dans cette affaire. C'est ça que j'ai à faire, c'est pour ça je suis ici. Sinon vous êtes seuls, vous deux, à essayer de fixer des dates, puis donc.

M. RANCOURT: M. le juge....

LE TRIBUNAL: Parce que vous voulez un procès aussi, j'imagine.

M. RANCOURT: Oui. Je veux un procès.

THE COURT: Parce qu'à un moment donné, à un moment donné, il n'y a pas d'autres portes de sortie ou c'est soit un règlement qui serait médiation ou une conférence. Ça sera une bonne chose, selon moi. Je crois que j'ai déjà mentionné cette idée. Okay? Pas avec moi, mais avec quelqu'un, peut-être un juge d'expérience. Je ne sais pas si ça vous intéresse.

M. RANCOURT: Ça c'est une question peut-être au-delà de ce qu'on est là pour aujourd'hui.

LE TRIBUNAL: Ça c'est pas une question ici, mais j'ai déjà mentionné, ça soit par la médiation, que vous pouvez vous entendre sur un médiateur. Ou, si vous voulez un juge, pour vous aider à régler cette matière, donc. Mais ça prend deux pour danser, as they say in, you know, it takes two to dance. If there's no agreement then we're going follow - on va se - we're going to follow the normal - les règles de procédure civile.

M. RANCOURT: La chose qui m'inquiète, M. le juge, je sens une injustice ce matin. Parce que vous avez entendu M. Dearden dire des choses très préjudiciables; vous ne l'avez pas interrompu. Il a dit tout ce qu'il voulait dire, des choses effrayantes, outrageuses je dirais même.

LE TRIBUNAL: Okay.

M. RANCOURT: Et je n'ai même pas eu le droit de répondre à ces choses-là, qu'il a dit....

LE TRIBUNAL: Mais ça c'est....

M. RANCOURT: Qu'il a dit pleinement.

LE TRIBUNAL: Peut-être j'aurais dû - ça fait partie de sa plaidoirie pour les raisons pourquoi qu'il veut une date plus tôt.

M. RANCOURT: Et ça fait partie de mon plaidoirie pourquoi je ne veux pas une date plus tôt. Parce que si ça c'est légitime ce qu'il dit, moi je veux pouvoir dire que des choses qui montrent que c'est pas légitime.

LE TRIBUNAL: Okay. Mais ça ça serait des questions pour procès ou - je ne sais pas, mais ça c'est, donc - date. Pourquoi pas le 3 ou le 7 de juin?

M. RANCOURT: Alors, voici pourquoi pas, M. le juge. Je vous donne un document.

THE COURT: Vos dates d'arbitrage sont lesquelles?

M. RANCOURT: M. le juge, je vous donne un document par rapport à la date.

LE TRIBUNAL: Oui.

M. RANCOURT: Ça c'est des soumissions que j'ai fait à M. Dearden le 25 avril, des réponses qui avait été ordonnées dans votre - dans votre ordre, et vous pouvez voir il y a neuf pages de réponses par rapport à seulement la section "U". Juste la section "U". Je donne ça pour que vous voyez. J'ai envoyé ça le 25 avril à M. Dearden, et ça c'est pas les documents, c'est juste la description de où se trouve les documents. Et ça c'est uniquement la section "U" que vous aviez ordonné qui devait être répondue pendant 15

jours.

Alors, ça montre un peu le niveau de détails et de travail qui est nécessaire pour répondre aux questions de production, ce sont des questions de production de M. Dearden, et j'ai envoyé ça à M. Dearden, il le sait très bien. Alors, c'est pour vous montrer à quel point ces questions de production ça représente un travail très significatif, et j'ai besoin de le temps de - le faire. Sinon, j'aurai pas le temps de le faire et je vais être obligé de soit annuler encore ou arriver sans les documents. Je ne sais pas lequel je peux faire si j'ai pas le temps de les produire. Je veux bien faire le travail. Je veux le faire complètement. Vous pouvez voir dans ce document que je le fais avec assiduité, avec détail, mais j'ai besoin du temps pour le faire. Je n'ai pas le temps avec ce que vous imposez habituellement. C'est ça mon point.

MR. DEARDEN: Your Honour,...

M. RANCOURT: Et....

MR. DEARDEN: ...all I'm asking him for is copies of documents that he names. That's all I was asking him to produce.

THE COURT: What documents are we talking - I see there's a....

MR. DEARDEN: Like, he'll mention an article that he wrote...

M. RANCOURT: M. Dearden.

MR. DEARDEN: ...as a physics prof on somehow making him an expert on statistical methodology or whatever but it's just - he's mentioned

documents in answers and also you in your March 6th order, Your Honour, had ordered him to produce certain documents as well. That's it. I'm not asking him to make work, I'm asking...

M. RANCOURT: Allons voir.

MR. DEARDEN: ...him for copies. But he's trying to use this to diffuse the fact that there should be a date set in May for his continued examination...

M. RANCOURT: Aberrant.

MR. DEARDEN: ...for discovery on what he's been ordered to answer.

M. RANCOURT: Aberrant. Et...

MR. DEARDEN: Pardon?

M. RANCOURT: J'ai dit aberrant. C'est une aberration.

MR. DEARDEN: What does that mean? Abhorrent. Okay. Okay.

M. RANCOURT: C'est une aberration. Il veut interférer avec mon arbitrage que ça fait deux ans que j'attends d'avoir le procès de mon arbitrage. Il veut que je sois - regardez la lettre des avocats. Regardez ce qu'il - dans la lettre ça dit clairement il y a un, deux, trois, quatre, cinq paragraphes de Me Houdelle (ph), le conseil du syndicat, qui explique à quel point j'ai besoin de préparer, qu'il y a des milliers et des milliers de pages de documents que je dois revoir, que - M. Dearden, M. Dearden a dit que j'aurais pu me présenter le 19, M. le juge.

THE COURT: Okay, we'll - what about July? I'm going to give - je vais l'accorder les mois de

mai, juin. I don't expect we'll continue - we'll complete this matter over the summer in any event. Mr. Dearden, what dates in July do you have?

5 M. RANCOURT: M. le juge, j'aimerais juste signaler une chose.

LE TRIBUNAL: Attends, juste un instant. Non, non, non, je vais compléter là, on passe - on est rendu à 11 moins 20, on n'est pas complété la première chose pour une date. C'est ça, ici....

10 M. RANCOURT: Mais c'est celle la plus difficile.

LE TRIBUNAL: Okay.

MR. DEARDEN: So he wins again.

15 THE COURT: Well, he wins sometimes, he loses sometimes, you wins sometimes....

MR. DEARDEN: The delay is just incomprehensible,...

THE COURT: Okay.

MR. DEARDEN: ...Your Honour.

20 THE COURT: Okay. Well,...

MR. DEARDEN: But, anyway. You've asked me the week of July 1st, Your Honour. I'm clear 2, 3, 4, 5.

THE COURT: Okay he wants - what's your date?

25 MR. DEARDEN: July 5th.

THE COURT: July 5th. Parce que vous êtes complété le 26 de juin.

30 M. RANCOURT: J'ai expliqué que, parce que je veux faire des réponses de cette qualité-là, je veux arriver prêt.

THE COURT: Then, okay, the week following? The week following? Any - are you - is that?

MR. DEARDEN: Why would we even consider the week following, Your Honour? You just gave him two months. It's incredible.

M. RANCOURT: J'ai pas deux mois. J'ai deux mois où je suis occupé.

THE COURT: Okay, July 5th? July 5th?

MR. DEARDEN: Your Honour, I'm not in the province July 8th through to 21.

THE COURT: Okay, July 5th, donc, la date c'est 5 juillet.

Okay, les documents.

M. RANCOURT: Pardon?

LE TRIBUNAL: Les dates pour les documents, de fournir, produire les documents.

M. RANCOURT: Ça va être à la dernière minute. Je ne peux pas faire autrement.

LE TRIBUNAL: On est au mois de mai, M. Rancourt.

M. RANCOURT: Est-ce que vous savez...

LE TRIBUNAL: Est-ce que - okay.

M. RANCOURT: ...le travail que ç'a pris pour faire ça?

LE TRIBUNAL: Non, je vois que vous avez fait un travail. Qu'est-ce que je propose....

M. RANCOURT: Mais M. Dearden a dit que je pouvais me présenter le 19.

LE TRIBUNAL: Attends, attends.

M. RANCOURT: Le 19 avril. Il a dit ça, que j'aurai pu me présenter le 19. J'avais une rencontre avec mon syndicat. J'ai des rencontres régulières avec mon syndicat. Ce jour-là j'avais un rencontre avec mon syndicat. Il dit des choses comme ça là, il sort ça de son chapeau.

Il dit n'importe quoi.

LE TRIBUNAL: Okay, M. Rancourt, pour le 5, la date pour fournir les - mais je propose - what about if you give him a list of the documents?

MR. DEARDEN: I have, Your Honour. In the Notice of Examination to have him...

THE COURT: Where is that list?

MR. DEARDEN: ...attend on April 19th, I'll show you....

THE COURT: Okay. Is there - is it an extensive list? Are these...

MR. DEARDEN: No.

THE COURT: ...documents available?

MR. DEARDEN: It isn't. It's what you've ordered, Your Honour. For instance, give me the list of your witnesses.

THE COURT: Okay. That's not a very big thing. Donc. By the 1st of July.

M. RANCOURT: Je peux le commenter?

LE TRIBUNAL: Par - regardez les noms des témoins. Faut que ça soit....

M. RANCOURT: Les témoins en soi c'est pas une grosse chose.

LE TRIBUNAL: Pas une grosse chose. Documents. So by July 1st? Is that sufficient?

M. RANCOURT: Non, ça c'est le Canada Day.

LE TRIBUNAL: Oui. Avant July 1st. So is that sufficient? C'est suffisant?

MR. DEARDEN: The list that I have in the Notice of Examination...

THE COURT: Yes.

MR. DEARDEN: ...that I served on him, Your

Honour, if I have his productions and answers by June 27th, that would be fine.

M. RANCOURT: Non, pas question.

THE COURT: Well he finishes the 26th. What about June 30th? I know it's late in the day.

M. RANCOURT: Est-ce que je peux dire quelque chose?

THE COURT: It gives it - ça va prendre deux heures à faire. This is getting ridiculous. We're getting ridiculous.

M. RANCOURT: Et, non, non...

LE TRIBUNAL: On est rendu....

M. RANCOURT: Je veux dire quelque chose.

LE TRIBUNAL: Maître - monsieur - pas maître, M. Rancourt, Professor Rancourt,...

M. RANCOURT: Merci.

LE TRIBUNAL: ...vous êtes - vous avez des élèves à un moment donné, vous avez eu des élèves, et des dates, des examens. You've got to be ready. Il faut être prêt.

M. RANCOURT: Oui.

LE TRIBUNAL: On ne peut pas dire, "Okay, non, non, je vais le faire dans deux mois."

M. RANCOURT: Est-ce que je peux dire une chose?

LE TRIBUNAL: Le vrai monde, ça marche pas comme ça.

M. RANCOURT: On a déjà une date, que vous avez établie, mais j'aimerais dire une chose.

LE TRIBUNAL: Oui.

M. RANCOURT: C'est la chose suivante. M. Dearden veut connaître les réponses que je vais donner au préalable. Mais moi je ne connaîtrai

pas ses "follow-up" questions au préalable.

LE TRIBUNAL: But this - Mr.....

M. RANCOURT: Il veut faire ça à froid et....

LE TRIBUNAL: Non, non, non, non, non.

M. RANCOURT: Il veut faire ça à froid.

LE TRIBUNAL: Non, non, non. M. Rancourt, that's discov - c'est ça le processus, vous devez répondre à des questions pertinentes.

M. RANCOURT: Moi je propose qu'on fait ça par écrit, tout ça par écrit.

LE TRIBUNAL: Non.

MR. DEARDEN: It's called an oral examination for discovery.

LE TRIBUNAL: Il a droit. Il a droit pour vous poser des questions. So, le 30 juin. 30th of June? Le 30 juin, fournir les documents demandés dans le Notice of Production - is it a....

MR. DEARDEN: You know that's a Sunday, eh, Your Honour.

THE COURT: Is it a Sunday?

MR. DEARDEN: June 30th. June 28th is a Friday.

M. RANCOURT: Pourquoi pas le 2 juillet, la dernière fin de semaine?

MR. DEARDEN: Because I need time to prepare your examination for discovery, sir.

M. RANCOURT: Vous êtes très rapide, M. Dearden.

MR. DEARDEN: Excuse me.

M. RANCOURT: Le 2 juillet ça serait suffisant.

MR. DEARDEN: No, it won't give me enough time, Your Honour.

M. RANCOURT: Ça me donnerait quelques jours pour respirer, et ramasser tout....

5 LE TRIBUNAL: Okay. Le 28 de juin. Vous avez deux mois à fournir ces documents, quasiment. Okay. 28 de juin. Le 5 juillet pour les - compléter l'examen au préalable de M. Rancourt. Okay ça c'est le premier item.

M. RANCOURT: Pardon, vous avez dit le 28 juin?

LE TRIBUNAL: 28 juin.

M. RANCOURT: Le deuxième item. Mon deuxième item c'était - c'est bon.

10 LE TRIBUNAL: Vos représentations sur *Champerty costs*.

M. RANCOURT: Oui. Donc, je n'ai pas eu le temps avec - parce que je dois perfectionner un appel à la Cour d'appel, qui n'est pas fait encore.

15 LE TRIBUNAL: Okay, mais ça c'est pas des choses qui m'impliquent.

M. RANCOURT: Non, mais c'est des choses qui m'impliquent moi dans mon utilisation du temps.

20 LE TRIBUNAL: Ça c'est des - vous avez les pleins droits de faire appel, comme vous savez, c'est pas nouveau, mais ça c'est pas des grands facteurs pour moi.

25 M. RANCOURT: La réalité physique de mes exigences dans le temps, c'est quelque chose qui est pertinent ici. La réalité physique de ce que j'ai le temps de faire....

LE TRIBUNAL: Ah, ça c'est un - c'est sujet à un débat assez sérieux. Est-ce qu'on devrait - j'étais généreux.

30 M. RANCOURT: Je ne suis pas une équipe d'avocats.

LE TRIBUNAL: Non non, mais vous êtes - ça

c'était votre choix. C'est votre choix...

M. RANCOURT: Non, c'est pas une question de choix.

LE TRIBUNAL: ...d'être non-représenté. Ça c'est votre choix. Je le respecte. C'est pas - mais les conséquences. Il y a des conséquences, que vous préparez pas de documents, etcetera, etcetera. C'est pas au système d'accommoder quelqu'un qui décide de représenter lui-même. Vous avez le plein choix, mais c'est pas au système, okay, vous n'avez pas d'avocat donc vous avez un an à place de 30 jours à faire quelque chose. Ce système fonctionnerait jamais si.

M. RANCOURT: J'ai pas demandé un an.

LE TRIBUNAL: Non, mais c'est ça cette sorte de questions....

M. RANCOURT: Il y a un déséquilibre dans les ressources.

LE TRIBUNAL: Mais ça c'est pas - ça existe des fois.

M. RANCOURT: Et qui peut être pris en compte légèrement en me donnant un peu plus de temps. Ils ont un budget illimité, M. Allan Rock paie tous leurs coûts légaux,...

LE TRIBUNAL: Okay.

M. RANCOURT: ...sans limite.

LE TRIBUNAL: Puis vous voulez quelle date pour compléter vos représentations sur la question de dépens sur le champartie.

M. RANCOURT: Sur le coût? Sur le coût?

LE TRIBUNAL: Oui.

M. RANCOURT: Alors, nous sommes....

MR. DEARDEN: I'll have submissions on this, Your Honour.

THE COURT: Yes, of course.

M. RANCOURT: Nous sommes occupés donc maintenant jusqu'au 5 juillet. J'aimerais avoir deux semaines pour faire ces soumissions sur le coût. Ça nous amène au 19 juillet.

LE TRIBUNAL: Okay, M. Dearden?

MR. DEARDEN: Okay, Your Honour, this is a complete abuse by Mr. Rancourt. You had - did I hand you the case management endorsement of March 27th that you made, Your Honour?

THE COURT: Ah yes.

MR. DEARDEN: So, Your Honour, paragraph 2, you indicated that Mr. Rancourt objects and submits that a full day should be set aside to hear the two motions. In addition Rancourt submits that he does not have time to prepare because he has deadlines to make costs submissions. Paragraph 7, you take into consideration his submissions because he made the same arguments about, you know, being too busy, "I've got all these things to prepare, in the Court of Appeal and the Supreme Court of Canada." And you gave him two additional - you gave him till April 30 for both his costs submissions in the refusals motions and the discovery and the *Champerty* motion of April the 30th. And what....

THE COURT: So I've already dealt with this. I've already given an extension. C'est ça?

MR. DEARDEN: And what he's done, Your Honour - I have to put this on the record - because he uses

5 everything that he can against me, my client and
the Court, and anybody else who he disagrees with
in this courthouse, including court reporters.
He just takes your order as a suggestion and
flaunts it. He not only ignored your deadline
for costs submission on *Champerty*, he ignored
your deadline to file his motion record materials
in his leave to appeal application which were due
on April the 4th. He ignored it. Okay?

10 He can't do this, Your Honour. If you let
him get away with this today, to give him a more
extended deadline because of the excuses that
he's making, that he didn't have time, he will
continue doing that until the cows come home.
15 And he can't do that. He's no different than any
other litigant in this Court. You can't just
flaunt case management orders and ignore dates
unilaterally. And he did.

20 And he made the attempt, Your Honour, and you
may recall as well, that he tried to get you to
reconsider your March 27th endorsement. And I'm
handing you the April 2nd letter that you sent to
him saying you're not prepared to reconsider your
March 27th endorsement. And then what's he do?
25 Relentlessly, he comes back here again and says,
now I need till July 19th when you gave him extra
time back in April to put these cost submissions.

30 So the submission of Professor St. Lewis, and
I have authority to convey the University of
Ottawa's position on behalf of Mr. Doody, is that
the order's been made. He breached it. You are
now in a position to make the cost decision on

the *Champerty* motion without Mr. Rancourt's submissions on that because he deliberately flaunted this Court's order.

M. RANCOURT: J'aimerais répondre, M. le juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Alors,...

LE TRIBUNAL: C'était quoi la date originale pour les représentations sur la question de champartie?

M. RANCOURT: Si je me souviens bien, d'après l'ordre c'était 15 jours après le jugement.

LE TRIBUNAL: Puis ça c'était quelle date?

M. RANCOURT: C'est-à-dire que eux faisaient 15 jours et ensuite moi j'avais 15 jours pour répondre.

LE TRIBUNAL: Oui.

M. RANCOURT: Et la date je me souviens pas. Mais ça fait - ça fait - je ne sais pas, plus d'un mois, certain.

LE TRIBUNAL: Champartie, c'était quoi - when was the *Champerty* motion?

MR. DEARDEN: March 13th.

LE TRIBUNAL: March 13, so the 15 would have been April 15th-ish. Middle of April.

MR. DEARDEN: No, it was earlier than that, Your Honour, that his submissions were due. But....

M. RANCOURT: Non, parce que moi c'était en réponse. Moi c'était en réponse.

MR. DEARDEN: April 12th is what my associate's....

THE COURT: So, I've given you an extra 20 days, something like that.

5 M. RANCOURT: La raison que vous n'avez pas
reconsidéré quand je vous ai demandé de
reconsidérer la première fois, est dans votre
ordre de - endorsement. Si je peux me permettre
de lire le paragraphe en question - je vais
emprunter ça à M. Dearden. Ça dit, au paragraphe
6:

10 "However, this case management endorsement is
subject to the discretion of the judge
hearing the motions for leave on April 17th
being satisfied that the matter may be heard
on April 17th, and if not, to adjourn them to
an agreeable date."

15 MR. DEARDEN: That's Justice Kane's matter.

M. RANCOURT: Donc, vous aviez donné la décision
au juge. Le juge a choisi de ne pas prendre une
date pour....

MR. DEARDEN: This is not *Champerty*.

20 LE TRIBUNAL: Mais ça c'est une autre affaire.
Moi je parle de la question...

M. RANCOURT: Oh. Je me suis peut-être trompé.

THE COURT: ...pour le 7 - paragraphe 7. J'avais
déjà donné une extension de 20 jours ou 15 à 20
jours.

25 M. RANCOURT: Ah, oui. Ah, oui. Ah, oui.

LE TRIBUNAL: Ça c'est la question.

M. RANCOURT: Non, mais c'est relié. C'est pour
ça que j'en parle.

LE TRIBUNAL: Okay, la demande...

30 M. RANCOURT: C'est parce que...

LE TRIBUNAL: ...pour reconsidérer, c'était pas à
propos des dépens. C'était à propos du - laisser

la discrétion au Juge Kane.

5 M. RANCOURT: Mais toutes les choses arrivaient en même temps. C'est pour ça que j'avais pas le temps de le faire. J'allais être devant le juge le 17. Je n'avais pas eu le temps de préparer mes documents. Il allait décider si on allait le mettre à plus tard. Il a pas décidé. Tout ça arrivait en même temps. C'est pour ça que je n'ai pas pu - vous voyez, je vous ai envoyé deux documents de réponse. J'ai fait le plus possible, comme j'ai pu, deux soumissions pour des demandes de fonds. Je les ai faits. La troisième, je veux la faire. Je n'ai pas eu le temps de le faire. Je travaille - je me lève à 15 6h00 le matin, je travaille 10 à 12 heures sur mon "perfecting appeal", et je vous ai expliqué dans ma lettre que ça devait être ma priorité parce qu'il y a un deadline absolu pour ça. C'est pour ça que je n'ai pas eu le temps de le faire. Donc, là, je demande d'avoir une extension. On parle de 200,000 \$, M. le juge. Ils veulent des dépens de 200,000 \$. Et je n'ai pas eu le temps de faire ma soumission sur les coûts que je dois faire en toute justice. C'est tout ce que je demande, d'avoir deux semaines pour faire cette soumission-là.

25 LE TRIBUNAL: Deux autres semaines?

M. RANCOURT: Deux semaines au-delà du 5 juillet.

30 LE TRIBUNAL: Pas au 5 juillet. Ça c'est - c'est trop loin. C'est trop loin.

M. RANCOURT: Il n'y a pas d'urgence pour ces coûts - ces soumissions de coûts, M. le juge.

5 Moi, je suis occupé jusqu'au 5 juillet avec tout ce que vous venez de mettre. Et je veux deux semaines pour préparer les coûts par rapport à la motion de *champartie*, où ils veulent 200,000 \$. C'est très simple ce que je demande.

THE COURT: Okay. Till July 15th to do costs. I grant you it's an extension. It's not going to change the ultimate...

10 M. RANCOURT: Merci.

THE COURT: ...effect on this. And I realize that, c'est vraiment - it's being overly generous to M. Rancourt, but I don't expect that it's going to change the outcome on this case one way or the other.

15 M. RANCOURT: J'apprécie beaucoup, je....

MR. DEARDEN: Your Honour, can I ask you to do this?

M. RANCOURT: Je - je - excusez-moi, j'étais en train de parler.

20 MR. DEARDEN: Can I ask you to do this?

M. RANCOURT: Monsieur, j'étais en train de parler.

LE TRIBUNAL: Un instant, un instant.

25 MR. DEARDEN: He just breached two orders in you March 27th case management endorsement. And I would ask Your Honour to put him on notice that the next time he does this, he's not going to get the extension. He will now sit here thinking, "I can flaunt the Court's order. They're suggestions." That's what he's now taken them as: suggestions.

30 THE COURT: No, I'm not...

M. RANCOURT: Non, pas vrai.

THE COURT: ...but there will be no further extension absent - well, you can never say no in a future matter without knowing the circumstances. But it would be a peremptory date as is your July 5th date. These are dates that the consequences that flow from non-attendance at the discovery or non-submissions will be just the natural course.

MR. DEARDEN: Your Honour, I want the record to be clear that if Mr. Rancourt wants to question an order, he needs to bring a motion before the Court to change the date. He can't just decide, "I'm letting the day go by" and then come....

THE COURT: That is absolutely correct. Dates are dates.

MR. DEARDEN: So, going forward - going forward...

LE TRIBUNAL: Les dates sont les dates.

M. RANCOURT: Oui.

THE COURT: Going forward.

M. RANCOURT: On est en gestion de la cause pour une raison, M. le juge.

LE TRIBUNAL: Oui. Oui.

M. RANCOURT: Et, en gestion de la cause, vous pouvez faire ce que vous avez fait, et je le respecte beaucoup et je vous remercie beaucoup parce que c'est impossible pour moi de rencontrer les deadlines sinon.

MR. DEARDEN: No, that submission, Your Honour, says to me he doesn't understand what he's just done. He's breached a court order on purpose,

5 got away with it, and going forward is all - but I want to make sure that the record shows that he can't come back here and say, "Oh, you know, I was busy, and I just ignored this suggestion again." But he got his lifeline, if you will. That was today. And he can't do it again. An order is an order, and it isn't different for a self-rep as opposed to a represented party. That's all I want to be clear.

10 THE COURT: That is, that is - ça c'est la loi. Puis ça c'est -...

M. RANCOURT: Oui.

15 LE TRIBUNAL: ...j'ai déjà mentionné ça, le fait que vous avez pas d'avocat c'est pas une excuse, mais la raison pour laquelle....

M. RANCOURT: Je fais mon possible.

20 LE TRIBUNAL: La raison pour laquelle, c'est parce que vous avez votre arbitrage les mois de mai et juin. Puis je comprends c'est très important pour vous et puis c'est - si c'est simplement le processus de cette cause, c'est pas le même facteur. Comprenez-vous?

M. RANCOURT: Oui.

25 LE TRIBUNAL: Donc, il faut suivre les règles et mes ordonnances sauf une exception...

M. RANCOURT: M. le juge, ça fait deux ans....

30 LE TRIBUNAL: ...mais c'est - l'exception c'est votre arbitrage les mois de mai et juin. C'est pour ça je vous accorde le délai. Pas à cause de mes ordonnances.

M. RANCOURT: Non.

THE COURT: That's the factor that I'm - the

reason that I'm giving the extension.

M. RANCOURT: Ça fait deux ans...

LE TRIBUNAL: Okay.

M. RANCOURT: ...que nous sommes dans cette cause compliquée, M. le juge, et j'ai suivi tous les deadline, excepté récemment à cause des écrasements dans le temps.

LE TRIBUNAL: Okay.

M. RANCOURT: Vous savez très bien, n'est-ce pas?

LE TRIBUNAL: Prochaine matière, c'est un....

M. RANCOURT: Alors, il y a un autre point très important, M. le juge, avec de quitter la question de *champartie*.

THE COURT: But that's it. C'est tout. Là je prends pas d'autres questions.

M. RANCOURT: Oui. Non, non, non. J'ai besoin de votre ordre signée et entrée pour perfectionner mon appel.

LE TRIBUNAL: Non, non, non, non, non. Ça c'est des affaires à Cour d'appel, si vous avez manqué des deadlines ou des dates.

M. RANCOURT: Moi, j'ai pas manqué, j'ai pas manqué. Tout ce que je dis c'est que je dois perfectionner d'ici le 13 mai, et donc j'ai besoin pour mettre dans mon Appeal Book, votre ordre que M. Dearden a demandé que vous signez.

LE TRIBUNAL: Okay, est-ce qu'il y a une copie de cette ordre?

M. RANCOURT: Oui, je l'ai ici.

THE COURT: Is it agreed, did I not sign it?

MR. DEARDEN: No, no. He doesn't want any mention of cost submissions in the draft order,

Your Honour, so we sent ours.

THE COURT: I think I signed it - I think I've already signed it.

M. RANCOURT: Oh, j'aimerais savoir...

LE TRIBUNAL: J' imagine que j'ai déjà signé.

M. RANCOURT: ...ce que vous avez fait, parce que - oh, ça c'est important, M. le juge. Ça c'est...

THE COURT: I believe I signed one of them,...

M. RANCOURT: Ça c'est les soumissions....

THE COURT: ...but I think it was your order I signed. I'm pretty sure - I'm quite sure I've signed it a week or so ago.

MR. DEARDEN: We didn't get one, Your Honour, or at least I didn't.

THE COURT: You didn't get it back?

M. RANCOURT: Ça c'est les documents qui parlent de cette question-là, M. le juge. Et c'est très important parce que on vient de changer les dates qui seraient dans l'ordre.

THE COURT: I believe I signed one of them but maybe I - there have been so many let - il y tellement de lettres de vous et de Me Dearden, que, franchement là, laquelle date que j'ai eu quelle lettre, ça se....

M. RANCOURT: Là je viens de vous donner une lettre de 24 avril qui était adressée à vous par M. Richard Dearden, dans laquelle il y a les deux....

MR. DEARDEN: This is the one, Your Honour, that we sent you.

THE COURT: Okay.

MR. DEARDEN: Would have had that on it.

THE COURT: I believe I signed Mr. - your order, is what I think I signed. And it may be on my assistant's desk or wherever it is that these things go.

MR. DEARDEN: We'll follow up with the trial coordinator.

THE COURT: I believe - but in any event if you want me to sign one today, I can do that.

M. RANCOURT: Oui, M. le juge, parce que si vous avez....

LE TRIBUNAL: C'est tu daté le 13 décembre?

MR. DEARDEN: He doesn't want to sign our order.

THE COURT: But I believe I've already agreed to sign the order with the costs endorsement. La balance c'est....

M. RANCOURT: Attendez, attendez, M. le juge, attendez. C'est très important. Les dates qui sont ici, on vient de les changer aujourd'hui. On vient de changer les dates pour donner les soumissions pour les coûts aujourd'hui. Donc il ne faut pas signer cette ordre qui n'a pas les bonnes dates.

THE COURT: Okay, do you want to move those dates?

M. RANCOURT: Oui, absolument.

MR. DEARDEN: Yes, Your Honour, sure.

THE COURT: You have until - what did I say?

M. RANCOURT: Vous avez dit le 15 juillet.

THE COURT: The defendant shall have until the 15th of July.

M. RANCOURT: J'ai pas compris le - juillet 25?

C'est quoi?

MR. DEARDEN: It replaces the May 10th date, because it's 10 days after July 15th.

M. RANCOURT: Aha.

THE COURT: Okay, if there is another order out there, it may - I believe I've signed it, but someone will have to enter it.

M. RANCOURT: Comment est-ce qu'on fait ça, M. le juge?

LE TRIBUNAL: Bien, d'habitude on a trois copies. And someone picks it up, et il l'amène au...

M. RANCOURT: Au registraire?

LE TRIBUNAL: Oui, au registraire. Puis il va émettre, il va les estamper etcetera.

M. RANCOURT: Est-ce que je peux faire ça? Parce que j'en ai besoin pour mon - pour perfectionner mon appel.

THE COURT: Okay. Well we've - you can either make copies....

M. RANCOURT: Je peux - je peux le prendre. Je peux reprendre tout le document si vous voulez, ou....

THE COURT: Do you have a stapler? Staple that order together.

M. RANCOURT: Donc, je dois amener....

THE COURT: You want to - do you want to make a photocopy of the order so you have a signed copy?

MR. DEARDEN: Yes, please.

THE COURT: And then these can go back to - and then - là vous pouvez prendre l'original.

M. RANCOURT: Oui. Pourriez-vous me faire aussi - ils ont besoin de combien de copies?

LE TRIBUNAL: D'habitude c'est deux. You may need the approval.

M. RANCOURT: Pouvez-vous me faire trois copies?

THE COURT: No, I guess you don't need it with a signed order.

COURT SERVICES OFFICER: How many do you need?

M. RANCOURT: Trois.

THE COURT: Three copies?

MR. DEARDEN: Sure.

LE TRIBUNAL: Trois copies.

M. RANCOURT: Merci.

THE COURT: Okay.

M. RANCOURT: Les documents qui sont revenus c'est - je peux les ravoir?

Donc ça c'était important parce que j'ai besoin de ça pour perfectionner mon appel.

THE COURT: Okay, I guess the last item, c'est la question d'une motion devant le juge Kane. Is that the last item?

M. RANCOURT: Attendez, j'ai besoin de m'orienter un peu.

MR. DEARDEN: My submission on that, Your Honour, is this matter's in the hands of Justice Kane. I wrote Your Honour a letter on April the 18th which if you look at paragraph 3, Your Honour, it was my recollection of what happened before Justice Kane with respect to this, what I'll call "the leave to appeal the Gervais" issue, that is, does Mr. Rancourt get to re-examine Professor St. Lewis on the date that her and Ms. Gervais met. Is that - it is open to Justice Kane to dismiss this motion because Mr. Rancourt failed to comply

with you March 27th endorsement.

And indeed, Your Honour, at the opening of April 17th before Justice Kane, he asked Mr. Rancourt, where's his materials? And was fully aware that there was a breach of your order to file his materials on that leave motion on April the 4th. It is open to Justice Kane to dismiss that motion on that basis. Why Mr. Rancourt insists on fighting this is beyond me, because you clearly ruled in your March 27th order that you deferred the Gervais issue. You made no - that's why you didn't make any ruling on it in your March 6th decision. I had to complete my cross-examination of Ms. Gervais to argue that motion. I mean it's just ludicrous that he fights this.

At any rate, it's before Justice Kane. You scheduled it before him. He did deal with this in part. He certainly did not make a decision. But in my view it's open for him to dismiss that motion. Because Mr. Rancourt breached your order and didn't file any material.

THE COURT: So why don't we wait until Justice Kane rules?

MR. DEARDEN: Yes.

M. RANCOURT: M. le juge,...

THE COURT: And we could schedule either by short....

M. RANCOURT: ...très respectueusement, j'ai commandé le procès-verbal de cette journée-là. À mon sens, le juge Kane a donné aucune indication qu'il allait traiter cette question-là du tout.

Il a refusé d'établir une nouvelle date. Il a refusé de prendre une décision par rapport à ce point-là. Et on a eu une discussion de l'amener ici. Et c'est dans le procès-verbal. Et j'ai donné au juge Kane un document qui expliquait exactement pourquoi....

LE TRIBUNAL: De toute façon vous êtes pas prêt avant le mois de juillet, août...

M. RANCOURT: Exact.

LE TRIBUNAL: ...pour procéder, so.

M. RANCOURT: Exact.

LE TRIBUNAL: Donc si on a le juge Kane, on pourrait refaire une autre conférence de cas, soit au mois de - fin de juin - juillet je ne suis pas ici, la plupart.

M. RANCOURT: Faudrait que ça soit après juin, c'est sûr. Moi je peux pas revenir dans le milieu de mon affaire.

MR. DEARDEN: Your Honour.

M. RANCOURT: Mais - mais - mais - mais - M. Dearden, j'ai pas fini, s'il vous plaît. Est-ce que M. Dearden pourrait s'asseoir?

THE COURT: Okay. I think we'll do it the same way both ways. And those. Give the original to....

M. RANCOURT: J'ai besoin de deux....

MR. DEARDEN: Just one for me.

M. RANCOURT: Merci.

THE COURT: So I'm not - I think I'll just leave it to you to set another date.

MR. DEARDEN: And shouldn't just - why I stood up...

THE COURT: Yeah.

MR. DEARDEN: ...is, shouldn't Justice Kane do that? Because it's going...

THE COURT: Or let him do it.

MR. DEARDEN: ...to be before him.

THE COURT: Be perfect.

MR. DEARDEN: No need to come through you.

THE COURT: I would be....

M. RANCOURT: M. le juge....

LE TRIBUNAL: ...si le juge Kane va le faire, si c'est devant lui....

M. RANCOURT: Ce n'est pas devant lui, à mon sens. Il l'a ramené ici.

LE TRIBUNAL: Moi, je ne sais pas. Moi, je ne sais pas.

M. RANCOURT: On ne peut pas jouer à la patate chaude, M. le juge.

LE TRIBUNAL: Non, non. Bien, on va attendre la décision, qu'on reçoit la décision de juge Kane.

S'il a traité de cette affaire, bon, j'ai rien à faire. Nous avons rien à faire. S'il n'a pas traité de cette affaire, soit qu'il va fixer une date lui-même quand qu'il est disponible pour - à place de moi fixer une date pour le juge Kane.

Donc, deuxièmement - donc, on verra avec sa décision.

M. RANCOURT: J'aimerais faire, pendant trois minutes, des soumissions. Deux minutes des soumissions....

LE TRIBUNAL: Mais de toute façon, on peut pas fixer une date aujourd'hui avant que le juge Kane soit qu'il a fait une décision d'un côté ou

d'autre....

M. RANCOURT: Mais j'ai un point important à amener avant de terminer aujourd'hui.

LE TRIBUNAL: Attends. Et vous êtes pas prêt à procéder avant le mois de mettons août de toute façon. J'imagine le juge Kane va avoir une décision soit au mois de mai, ou au mois de juin, j'imagine.

M. RANCOURT: Permettez-moi de faire des soumissions pendant deux minutes avant de quitter aujourd'hui.

LE TRIBUNAL: Sur quel point?

M. RANCOURT: Sur le point que toute cette question avec le juge Kane, la raison que je ne pouvais pas faire des soumissions d'avance, je n'avais pas le procès-verbal du 26 novembre. C'est clair, je l'avais pas, et c'est nécessaire parce que c'est là que vous avez....

LE TRIBUNAL: Et vous ne l'avez pas encore.

M. RANCOURT: Et maintenant, je l'ai.

LE TRIBUNAL: Okay.

M. RANCOURT: Et maintenant, je l'ai, donc, maintenant j'ai ce que j'ai besoin. Mais - mais, je tiens à vous donner ce document...

MR. DEARDEN: So he says he has the November 26 transcript.

M. RANCOURT: ...qui montre que il y a eu un comportement inapproprié.

LE TRIBUNAL: Non, non, non, non, non, non, non. On va pas....

M. RANCOURT: Non, parce que ce - le 26, le transcript du 26 - eux l'avaient, ils me l'ont

pas dit. Et ils avaient une version "draft", et je me suis plaint formellement...

MR. DEARDEN: Oh stop. Stop. Please.

M. RANCOURT: ...et j'ai eu - et j'ai eu - et j'ai eu - et j'ai eu un rapport....

LE TRIBUNAL: Non, non, non, non, non, non. Ça c'est - non. Arrête. Arrête. Arrête.

On va - le dernier item, pour fixer une autre date, vous pouvez le faire. Si le juge Kane a tranché cette question, bon, ça vient de s'éteindre à un côté - une manière ou l'autre. S'il l'a pas fait, est-ce que le juge Kane va fixer une date? Je vais laisser cette discrétion au juge Kane. Le juge Kane, s'il veut que je la fasse, je vais le faire. Donc, par soit un ou l'autre, vous pouvez demander une autre conférence de cas pour fixer une date.

Okay? Donc c'est tout?

MR. DEARDEN: Yes, Your Honour.

LE TRIBUNAL: Je crois que c'est tout.

MR. DEARDEN: Thank you.

LE TRIBUNAL: Je veux pas avoir des commentaires sur le comportement....

M. RANCOURT: Oui, mais, il y a un comportement sérieux, non-éthique, et vous refuser de l'entendre. C'est ce que j'entends.

LE TRIBUNAL: Non, non, non, non, non, non, non. Mais, c'est pas - je refuse d'entendre des critiques, soit l'un ou l'autre. C'est pas ici devant moi à le faire. S'il y a un appel d'une décision ou de quelque chose, vous pouvez l'emporter. Pas c'est pas à moi. Moi, faut que

je gère la cause pour vos deux, dans une manière équitable.

M. RANCOURT: Mais quand - mais quand un côté se comporte mal....

LE TRIBUNAL: Si vous voulez critiquer l'un ou l'autre, est-ce que....

M. RANCOURT: ...il faut - il faut qu'un juge puisse intervenir quand un côté se comporte mal. Et c'est le cas.

LE TRIBUNAL: Okay. Mais c'est temps de le faire au procès ou au - dès qu'il y un processus judiciaire de quelque sorte. Okay? C'est bien, c'est tout?

MR. DEARDEN: Thank you, Your Honour.

M. RANCOURT: Merci, M. le juge.

CERTIFICATE OF TRANSCRIPT
EVIDENCE ACT, subsection 5(2)

I, John A. Curry, certify that this document is a true and accurate transcription of the recording of (St. Lewis v. Rancourt) in the Superior Court of Justice held at 161 Elgin Street, Ottawa, Ontario, taken from Digital Recording No. 0411-56-20130506, which has been certified in Form 1.

12 JULY 2013

Date

John A. Curry

John A. Curry

COUR SUPÉRIEURE DE JUSTICE

Entre:

JOANNE ST. LEWIS

Plaintiff

ET

DENIS RANCOURT

Défendeur

DEROULEMENT DE LA PROCEDURE

ENTENDU DEVANT L'HONORABLE JUGE R. SMITH,
le jeudi 1^{er} août 2013, à OTTAWA (Ontario).

COMPARUTIONS:

Richard G. Dearden
Denis Rancourt

Counsel for the Plaintiff
En Personne

(i)
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COUR SUPÉRIEURE DE JUSTICE

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Transcription demandée le:1^{er} août 2013
Transcription complétée le:1^{er} septembre 2013
Avis donné le:3 septembre 2013

Wednesday, July 31st, 2013

THE COURT: So, the first thing is probably
l'agenda.

M. RANCOURT: Oui.

LE TRIBUNAL: De faire un agenda.

M. RANCOURT: Oui, j'avais demandé une conférence
sur la cause, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Et le but principal c'était de
trouver un moyen d'aller en médiation et....

LE TRIBUNAL: Médiation?

M. RANCOURT: Avec l'aide d'un juge, comme vous
aviez proposé à deux reprises...

LE TRIBUNAL: Oui.

M. RANCOURT: ...au passé, n'est-ce pas?

LE TRIBUNAL: Oui. J'ai l'intention - pour M.
Dearden, I am intending today to set a pre-trial
date for you, and secondly I am intending to set
a trial date, and this matter is going to move
forward. That's my thinking.

M. RANCOURT: Okay, donc vous....

THE COURT: Subject to time limits, and I have
some dates, so.

MR. DEARDEN: And, Your Honour, did you get my
letter that I sent in?

THE COURT: Yes.

MR. DEARDEN: Yeah, okay, because I was asking
for a pre-trial conference date...

THE COURT: You were.

MR. DEARDEN: ...in the letter.

THE COURT: I guess we may have been thinking the same way all three of us. Médiation c'est la même chose, conférence de pré-procès.

M. RANCOURT: Oui. Donc - donc, une médiation avec juge....

LE TRIBUNAL: Un pré-procès, c'est une....

M. RANCOURT: Donc, vous assimilez comme étant la même chose.

LE TRIBUNAL: Oui.

M. RANCOURT: Vous ne prévoyez pas commencer par une médiation qui pourrait avoir lieu le plus tôt possible?

LE TRIBUNAL: Non, non, non, c'est la médiation avec une juge. Finalement c'est ça.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est une conférence de règlement.

M. RANCOURT: Oui.

LE TRIBUNAL: Le juge, ça c'est des questions, d'habitude ça serait moi. I don't know. You can make some submissions about that. Sinon on - je ne dis pas le mot "brûle" les juges - burn up our judges. Il ne resterait pas de bilingue, sans de conflit...

M. RANCOURT: Okay.

LE TRIBUNAL: ...puis connaissance de la cause. I don't know, but you can make submissions on that issue.

M. RANCOURT: Si je peux....

THE COURT: I won't - je ne serai pas le juge de procès.

M. RANCOURT: Non.

LE TRIBUNAL: Je peux vous assurer de ça, cette question.

M. RANCOURT: J'aimerais juste demander quelques clarifications, s'il vous plaît, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: Alors, si je comprends bien, moi ce que j'avais compris c'est qu'il y avait une possibilité qu'on aille très tôt en médiation, de sorte à....

LE TRIBUNAL: La médiation, il existe - il y a une médiation avant les procédures que vous avez déjà passées, j'imagine.

M. RANCOURT: Si je peux finir ma pensée, M. le Juge.

LE TRIBUNAL: Oui, parce que de la médiation à travers de la cour, c'est des conférences de règlement ou, en civil, un pré-procès - "pre-trial conference" - avec un juge.

M. RANCOURT: Okay.

LE TRIBUNAL: Puis le but, c'est de la médiation avec un juge qui ne sera pas le juge de procès.

M. RANCOURT: Oui. Si je peux juste finir ma pensée, M. le Juge.

LE TRIBUNAL: Oui, oui.

M. RANCOURT: Ce que j'avais compris c'est d'aller assez tôt en médiation, de sorte à éviter, par exemple, d'être obligé d'aller à la Cour d'appel parce qu'on a déjà une date pour aller à la Cour d'appel, et à éviter les....

LE TRIBUNAL: Ça c'est - vous avez vos remèdes puis...

M. RANCOURT: Oui.

LE TRIBUNAL: ...vous allez à la Cour d'appel, vous aller à la Cour suprême, vous avez droit possiblement de faire ces choses-là. Ça c'est à vous ou c'est à Me Dearden, vous avez ces droits pareils, un et l'autre.

M. RANCOURT: Je voulais juste....

LE TRIBUNAL: Mais moi je veux que la cause avance.

M. RANCOURT: Oui, tout à fait.

LE TRIBUNAL: Parce que c'est ça qui - je vois ça perd - ça perd - plusieurs motions. As case management judge, comme juge qui gère la cause, moi je veux que la cause avance.

M. RANCOURT: Oui.

LE TRIBUNAL: Moi, j'ai un fardeau à m'assurer que cette cause va venir à la fin à un moment donné.

M. RANCOURT: Mais j'avais compr....

THE COURT: So that is my objective.

M. RANCOURT: Oui.

LE TRIBUNAL: Je t'ai dit cela.

M. RANCOURT: Oui, si je peux juste...

LE TRIBUNAL: Okay.

M. RANCOURT: ...exprimer ma pensée, M. le Juge.

LE TRIBUNAL: Oui.

M. RANCOURT: J'avais compris que, si on allait en médiation, on pouvait - et si on pouvait régler l'action, tous les motions additionnelles qui pourraient être cédulées, tout ça tomberait et serait réglé, parce que toute l'action serait réglée. Et donc, je voyais un avantage à faire ça, et j'avais compris que c'est ça que vous nous

proposiez aux deux parties. Avec l'aide d'un juge, de faire une médiation.

LE TRIBUNAL: Oui, c'est les mêmes pensées que j'avais, mais pas un autre procès. Parce que ça va aller...

M. RANCOURT: Non.

LE TRIBUNAL: ...pré-procès, procès. Là vous avez - peut-être il en reste des choses à faire, d'autre questions à poser.

M. RANCOURT: Mon....

LE TRIBUNA: Je sais pas, un ou l'autre, je ne sais pas exactement où est-ce que vous êtes rendus. I don't know exactly where you're at in the process but - but, anyway, I am intending to move it forward to a pre-trial and a trial.

MR. DEARDEN: We agree, Your Honour, on this side of the table. Let me tell you for the record that, you know, going back almost two years ago, I had to bring a motion to compel Mr. Rancourt to attend a mandatory mediation. And finally after I filed the second refusals motion in the context of that mandatory mediation, he agreed to come to mediation. And as I said in the letter that I provided to Your Honour today, the next settlement - the next discussion of settling this case should occur in a pre-trial conference, and I would agree - this side of the table agrees entirely that you could be the pre-trial conference judge because of your familiarity with the issues, because so much has gone on in this case, it's going to be difficult for another judge to get up to speed on what's gone on and

what the real issues are, and we experienced that initially with Justice Kane when he - and Justice Annis, you know, because there's a lot of stuff that has gone on in this case. You would be the most likely candidate to be the pre-trial conference judge. But that's - there's a possibility of settlement there, if - but I mean we're talking apology, take down of the offensive blogs which Mr. Rancourt as of today still says aren't defamatory, and substantial payment of damages and cost. And as we sit here today, this defendant owes over a hundred thousand in costs that have been awarded against him, that he refuses to pay. So for him to stand there and say, "Oh, let's have another mediation, it might resolve things before the Court of Appeal," here's his Champerty appeal on November the 8th, is just meaningless words coming - to me on this side of the table. Let's get to a pre-trial conference, let's try to settle it there.

THE COURT: Yeah.

Mr. DEARDEN: If it doesn't settle, let's go to trial.

THE COURT: On to trial, so....

M. RANCOURT: Je ne comprends pas pourquoi....

LE TRIBUNAL: Les dates que j'ai - les dates que j'ai pour les pré-procès - I have a couple of dates in October but that - I don't know if that's - and December 12th, 13th, 19th or 20th, ce sont quatre jours au mois de décembre.

MR. DEARDEN: The dates that I suggested in my letter, Your Honour, of today were the time

period December 9th to 16th. So it's post Mr. Rancourt's arguments of his appeal before the Court of Appeal on November the 8th. And by the way, Your Honour, the Supreme Court denied him leave with respect with his leave application that happened on July the 4th. So there's nothing before the Supreme Court anymore. There is a matter before the Court of Appeal, and there are very few issues to be dealt with in the libel action, which is what we want to deal with today. Very few things to clear out of the way.

THE COURT: So, est-ce que les dates - est-ce que ça vous convient?

M. RANCOURT: Juste - excusez-moi j'ai - j'étais encore en train de penser à la discussion qui venait d'avoir lieu. Je n'ai pas noté les dates, mais je veux juste dire quelque chose. Il me semble clair qu'il faut attendre la décision de l'appel avant d'aller au procès?

LE TRIBUNAL: Ah, oui, je pense que ça vaudrait la peine, oui.

M. RANCOURT: Je pense que c'est....

LE TRIBUNAL: Ça sera du gaspillage de temps de....

M. RANCOURT: Oui. Donc, je vois mal comment on peut régler les dates de procès, si on veut savoir....

LE TRIBUNAL: Pour les dates de procès, les dates que j'ai c'est au mois d'avril, mai ou juin de l'année prochaine.

M. RANCOURT: Ah oui.

LE TRIBUNAL: Ça c'est les prochaines....

MR. DEARDEN: Is this trial, Your Honour, sorry?

THE COURT: I'm on trial dates, but first I want to set a pre-trial.

MR. DEARDEN: Yeah.

LE TRIBUNAL: La sorte de médiation, comme vous avez demandé.

M. RANCOURT: Oui. J'avais expliqué que, à mon sens, moi je suis confiant qu'on pourrait trouver un arrangement, et rapidement, si on allait en médiation tout de suite. Et je suis confiant de ça, et en plus ça pourrait régler toutes les motions et l'appel et le procès, rien de ça n'est nécessaire. Je connais les exigences de la plaignante, et je suis confiant qu'on pourrait trouver un arrangement. Ça ne serait pas un procès en soit, ça serait quelque jours de médiation, de bonne foi. Et je suis très confiant qu'on pourrait trouver un - un *settlement* qui serait final.

LE TRIBUNAL: Bien, on peut faire des choses - plusieurs choses.

M. RANCOURT: Oui.

LE TRIBUNAL: Si Mme St. Lewis est d'accord, vous pouvez - j'ai l'intention de fixer une date de pré-procès puis peut-être une date de procès. Ça c'est - et puis si vous voulez faire une médiation, ce n'est pas le juge, l'ancien juge Chadwick ou - si ça vaut la peine. Vous êtes ouvert, c'est toujours ouvert à des parties à s'entendre.

MR. DEARDEN: Your Honour, if I could....

LE TRIBUNAL: Et puis même parler à l'un et

l'autre. You can even....

M. RANCOURT: C'est parce que....

MR. DEARDEN: Your Honour, if I could.

Unfortunately, Professor St. Lewis couldn't be with us today. It's the first date that she has actually missed. But she gave me instructions to inform the Court that she's not going to be re-victimized by this defendant again in mediation. So the pre-trial conference, that's where there's a chance to have a settlement. Not - you heard this defendant just indicated several days of mediation. This isn't a labour arbitration or a labour grievance that he's dealing with here. No, no, what he's saying - his confidence. We have zero confidence that he's going to wake up to reality here. He's - he doesn't think it's defamatory to call somebody a "house negro".

I'm not going - I'm not going to allow my client to be exposed to Mr. Rancourt in several days of mediation on what he thinks is going on with what he published, but to do it in a settlement conference, if it doesn't happen in the pre-trial conference - you know, if it happens, great. I mean - but he knows the terms; apology, take it down, which he absolutely refuses to do, and a huge sum of money. He won't even - he won't even - he hasn't paid a cost award since last October, Your Honour. Over a hundred thousand dollars owing and counting from this defendant.

So, I say yes, have the pre-trial conference

after the Court of Appeal deals with his argument on November the 8th. And that's why I said the time period post-December, you know, December 15th or 9th to - what did I say just to get it exact - 9th to 16th. You've got dates: 12, 13, 19, 20.

We're available all of those dates in December.

THE COURT: So, shall we fix one of those dates?

Est-ce que on devrait fixer une de ces dates?

M. RANCOURT: Pour ce qu'on appelle le "pre-trial".

LE TRIBUNAL: Un pré-procès, settlement - conférence de règlement.

M. RANCOURT: Oui.

LE TRIBUNAL: Pour une journée. I'll fix a date. D'habitude ils sont à peu près une heure. Parce que les parties sont au courant des questions. I'll set it for a day. I don't know if a day - I mean - but that would be - a day would be the maximum.

M. RANCOURT: Mais si notre but....

LE TRIBUNAL: Parce que si vous êtes - vous êtes au courant des faits vos deux, les options sont - je ne le sais pas là, mais moi de - en tout cas, je ne peux pas me lancer dans ce pré-procès sans les mémoires des parties et vos positions exactes. I mean, I have to hear your settlement proposals and I generally give my opinions, how I see it, okay, and maybe je peux vous aider, peut-être que non. Les parties sont libres à aller au procès, mais le but c'est de - c'est d'avoir une chance de régler. Donc, moi je veux....

M. RANCOURT: Donc, il y a des....

LE TRIBUNAL: Moi je veux...

M. RANCOURT: Oui.

LE TRIBUNAL: ...qu'on avance avec cette matière, j'ai indiqué ça au début. Donc, si ces dates-là vous conviennent....

M. RANCOURT: Pouvez-vous répéter les dates, s'il vous plaît. Je m'excuse.

LE TRIBUNAL: Les dates, j'ai - sont le 12, 13, 19 ou 20 de décembre.

M. RANCOURT: Ça serait une journée, en principe?

LE TRIBUNAL: Une journée au complet.

M. RANCOURT: Et je ne connais pas les règlements par rapport au "brief" qui doit être préparé. Je ne connais pas le contenu de ce "brief". J'imagine que c'est un contenu assez important?

MR. DEARDEN: It's rule 50, Mr. Rancourt, and briefs are due five days before the pre-trial conference dates.

LE TRIBUNAL: Cinq jours, c'est un mémoire, c'est semblable comme une factum de votre position. Le but c'est de - le but c'est de régler plusieurs - convaincre, parce que ça peut être un aspect de convaincre l'autre partie adverse de vos...

M. RANCOURT: Parce que si je comprends....

LE TRIBUNAL: ...- que vous avez raison de....

M. RANCOURT: Si je comprends bien, il y aurait pas un composante médiation dans le sens que quelqu'un fait une proposition, l'autre côté fait une contre-proposition, et il y a un échange comme ça.

LE TRIBUNAL: On pourrait le faire comme vous voulez le faire, soit - d'habitude je le fais

tout ensemble, mais des fois je peux me rencontrer avec un des côtés puis rencontrer avec l'autre. That's - I have done that as well, on the consent of the parties. Je peux vous rencontrer vous-même...

M. RANCOURT: Oui.

LE TRIBUNAL: ...seul avec votre position.

M. RANCOURT: Oui.

LE TRIBUNAL: Des fois ce n'est pas la même que - ou que avec Me Dearden et Mme St-Lewis.

M. RANCOURT: Moi je....

THE COURT: I forgot the name. What's it called when you do mediation? C'est quoi le - what's the word I'm missing, where the party goes and meets privately with....

MR. DEARDEN: Breakout?

THE COURT: No, it's not the word. Another word.

MR. DEARDEN: Caucus?

THE COURT: Caucusing, caucusing.

M. RANCOURT: Okay.

LE TRIBUNAL: Ça peut être "caucusing".

MR. DEARDEN: In a breakout room.

THE COURT: In a breakout room. So if the parties are consent... - if you think it's helpful, I will do that. If you don't think it's helpful, then we'll - I generally do them all...

M. RANCOURT: Moi je....

THE COURT: ...in the presence of everyone.

M. RANCOURT: J'aimerais....

THE COURT: Not in a courtroom, around a boardroom table.

M. RANCOURT: J'aimerais bénéficier de l'occasion

d'un - du type de médiation qui inclut "caucus", comme vous le décrivez. Je ne sais pas si mon adversaire est d'accord avec ça. J'aimerais savoir s'il est d'accord avec ça.

THE COURT: I would need the consent of the parties to do that.

MR. DEARDEN: I'm not giving him my consent right now, Your Honour. We'll wait to see how it unfolds. We can put our position - he already knows our position right now. Apology, take down, money. Okay? He can think about that between now and mid-December, and then he can let us know immediately at the pre-trial conference what his position is, and then we decide would a caucus be useful.

M. RANCOURT: Puisque M. Drearden est prêt à me donner sa position, peut-être qu'il peut donner la quantité d'argent dont il parle.

THE COURT: Well, I - unless you are prepared to....

MR. RANCOURT: What's the amount of money you're talking about, Mr. Dearden?

THE COURT: You know what, we're....

MR. DEARDEN: I'm not going to tell you that here. Mr. Rancourt, with Mr. Hickey, blogs on this and Ms. Gashoka who is continuing her publications on this. I'm not telling you that in a public court.

M. RANCOURT: Mais est-ce que vous acceptez de m'envoyer une note pour me le dire?

MR. DEARDEN: You can start with the \$102,000 of cost orders that you owe. You can start by

paying those.

M. RANCOURT: Donc, ça ça donne une idée de la quantité d'argent qu'il cherche.

LE TRIBUNAL: Oui. It might be....

M. RANCOURT: Mais je....

THE COURT: It might be - very often - and I'm not in the role of a settlement judge here because I'm a case management judge. Je suis dans différents chapeaux des fois. Mais des excuses ça aide beaucoup...

M. RANCOURT: Oui.

LE TRIBUNAL: ...à un règlement. L'argent c'est une chose; réputation c'est une autre chose.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc, peut-être le plus important c'est question de réputation puis - mais...

M. RANCOURT: Parce que....

LE TRIBUNAL: ...pour les dates, je veux fixer les dates.

M. RANCOURT: Oui, mais....

LE TRIBUNAL: Il faut qu'on en finisse aujourd'hui, une autre affaire.

M. RANCOURT: C'est juste que, avant de fixer les dates, je voulais savoir de quoi - qu'est-ce qu'on fixait. Alors, juste pour être clair, le "brief" serait notre position dans le cas, un peu l'historique du cas, mais la négociation serait un après l'autre, on essaye de trouver un arrangement.

LE TRIBUNAL: Un bref ce n'est pas - ce n'est pas énormément un document....

M. RANCOURT: Le bref est un document public, si

je comprends bien.

LE TRIBUNAL: Non.

M. RANCOURT: C'est soumis à la Cour.

LE TRIBUNAL: Oui.

M. RANCOURT: Donc, c'est un document public?

LE TRIBUNAL: Conférence de règlement, d'habitude ils sont retournés. Ils ne sont pas publics.

They're usually returned to the parties, I believe. They're not public, actually.

MR. DEARDEN: And nor is what goes on in the pre-trial conference.

THE COURT: It's not public.

MR. DEARDEN: It's a settlement negotiation.

THE COURT: The trial judge will not know, should not know, cannot know. Maybe you offer something, maybe he offers something, but in trial - il peut demander le double, ça ne veut pas dire - comprends tu? You may take one position in a trial, in court - mais vous pouvez aussi, en négociation, faire des compromis. So it's confidential. No one else knows.

M. RANCOURT: D'accord. Et moi je voudrais être accompagné, et la dernière fois qu'on a eu une médiation obligatoire, M. Dearden avait fait une motion, c'est vrai, mais c'est parce qu'il voulait choisir la médiateur de son choix. La motion était pour choisir le médiateur, et était aussi pour avoir la médiation immédiatement, avant de faire même un peu de découverte. Ça c'était la motion de M. Dearden, et c'est pour ça que je me suis objecté à cette motion-là. Donc je ne crois pas qu'un côté peut choisir le

médiateur, mais il y a une autre chose qui m'inquiète aussi. Quand on était allé en médiation, ils étaient cinq avocats, et j'étais seul. Il y avait cinq avocats dans la salle, incluant la plaignante. Il y avait plusieurs...

MR. DEARDEN: Just for the record,...

M. RANCOURT: ...collègues de Gowlings, et cetera.

MR. DEARDEN: ...Your Honour, it was for education, the associates that were attending that mediation, because he's written on this before and making it sound, like, you know, Gowlings is loading up on all kinds of talent against him. There were associates in the room including, Ms. Semenova beside me here, who was there for educational reasons.

M. RANCOURT: Je m'excuse, Monsieur le....

MR. DEARDEN: This is irrelevant to what we're talking about.

M. RANCOURT: M. le Juge - attendez une seconde.

LE TRIBUNAL: Je ne veux pas me lancer dans...

M. RANCOURT: Je m'excuse, mais...

LE TRIBUNAL: ...Est-ce qu'il y en avait quatre, est-ce qu'il y en avait....

M. RANCOURT: ...mais Wendy Wagner n'est pas quelqu'un qui a besoin de l'éducation, pour être là pour des raisons d'éducation. C'est une personne sénior à Gowlings. Ce que M. Dearden vient de dire est presque insultant. Et ainsi que M. Ryan Kennedy qui était là, je ne pense pas que c'est quelqu'un qui avait besoin d'être là. Mais le point est qu'il y avait....

LE TRIBUNAL: Vous voulez être accompagné par qui? Un avocat?

M. RANCOURT: Je veux être accomp... - j'aimerais que....

LE TRIBUNAL: Tu devrais avoir un avocat parce que vous - ça serait une bonne chose pour vous d'avoir un avocat avec vous.

M. RANCOURT: C'est une possibilité, mais le point est...

LE TRIBUNAL: C'est à votre choix.

M. RANCOURT: ...que j'aimerais avoir une personne qui m'accompagne de mon choix.

LE TRIBUNAL: Mais qui....

M. RANCOURT: J'ai quelqu'un en tête, qui est une personne qui est un directeur d'un organisme à but non-lucratif, qui est - s'appelle « Council for Canadians ». Ah non, pas « Council for Canadians », qui s'appelle « Canadians for Accountability ». Et il a accepté si son - si son cédule le permet, il pourrait m'accompagner. Et je demanderais....

MR. DEARDEN: Is he a lawyer?

THE COURT: Is he a lawyer?

M. RANCOURT: Non.

LE TRIBUNAL: Est-ce qu'il est avocat?

M. RANCOURT: Non, il n'est pas un avocat.

LE TRIBUNAL: D'habitude, les parties qui ne sont pas des avocats, des « paralegal » qu'on appelle, ne sont pas permises à faire des représentations. Ils ne sont pas obligés [sic] par des règles d'éthique comme des avocats.

M. RANCOURT: Bien, ce monsieur comprend très

bien les règles de confidentialité par rapport à la médiation.

LE TRIBUNAL: Mais ça c'est une autre question.

M. RANCOURT: Mais....

LE TRIBUNAL: Si vous proposez puis l'autre - Mme St. Lewis elle est d'accord ou pas d'accord, bon, vous pouvez répondre. Bon, la date, je vais fixer la date.

M. RANCOURT: Mais si ce monsieur peut venir ou si un avocat peut venir, j'ai besoin de savoir leurs dates. C'est pour ça que....

LE TRIBUNAL: Non, mais je veux fixer les dates. Je suis pas pour....

MR. DEARDEN: Delay, delay, delay.

M. RANCOURT: Ça c'est pas nécessaire, ce genre de commentaire de M. Dearden.

LE TRIBUNAL: Non, je suis d'accord, je suis d'accord.

M. RANCOURT: Oui.

LE TRIBUNAL: Adresse les commentaires - both to me. I think that would be the right way to do this.

MR. DEARDEN: Yes, Your Honour.

M. RANCOURT: Merci.

THE COURT: So - but the dates of December for a pre-trial, vous êtes libre.

M. RANCOURT: Oui, j'ai des - j'ai des temps de libre en décembre et je....

THE COURT: Okay, laquelle vous préférez, le 12, 13, 19 ou 20? Je crois que c'est des jeudis et puis des vendredis. C'est les dates que la coordinatrice m'avait....

M. RANCOURT: Évidemment, parce que je suis auto-représenté, parce que j'ai beaucoup de choses à apprendre, je préfère plus tard, évidemment, pour que - un processus que je ne connais pas du tout. Donc, personnellement, je préfère 19 et 20.

LE TRIBUNAL: Donc, le 19.

M. RANCOURT: Oui.

THE COURT: Okay. So the matter is set for a pre-trial on December 19th, 2013 for one day, starting at 10:00 a.m. So that will be an order. I'm not sure where to endorse these things because I - I've written it in my book but this will be a record, so that is step number one.

MR. DEARDEN: We can prepare an order, Your Honour.

THE COURT: You can prepare the order for that, okay, that's fine. Number two, do you wish to set a trial date at this point in time?

MR. DEARDEN: Yes, Your Honour, I do.

THE COURT: How long? How long would you estimate the trial? If we don't settle, I want the matter set so there's a schedule so it moves forward.

MR. DEARDEN: It's a jury trial, Your Honour. The defendant wants a jury. So I would anticipate that we're talking a three-week trial.

THE COURT: Okay. The facts are not contested really. The publication is a blog. The damages, maybe some evidence.

MR. DEARDEN: It's - to my reason, I'm guestimating three weeks, Your Honour, is because the witness list that Mr. Rancourt has provided

is going to cause some difficulties. He's just handed me an addition to the witness list, which he asked for Lynn Harnden and the lawyer who was against him in the labour grievance. He's got me on his witness list as well, which is atrocious that he'd do that. But anyway, so there's going to be a lot of time I anticipate the jury is not going to be in the room. So that's why I'm estimating three weeks.

THE COURT: Three weeks.

M. RANCOURT: Je ne comprends pas pourquoi M. Dearden dit que c'est "atrocious". À mon sens, ça fait partie d'une des défenses importantes dans le cas parce que une des défenses qui est plaidée dans le "statement of defence", c'est que c'est une action par proxy, par un organisme, une université, qui est un organisme gouvernemental, qui n'a pas le droit de poursuivre quelqu'un en diffamation. C'est reconnu dans le droit commun. Et donc, j'ai demandé que M. Dearden soit là pour voir les interactions entre M. Dearden et l'Université d'Ottawa.

Donc, je ne comprends pas sa réaction que c'est "atrocious". À mon sens, je ne suis pas un avocat mais ça me semble quelque chose de très raisonnable de pouvoir questionner cet aspect-là dans ma défense.

THE COURT: I don't think - je crois que - I don't think - that will be a trial judge who will deal with those things, I think, unless there's a motion brought on evidence, so. So, trois

semaines, les dates que j'ai....

M. RANCOURT: M. le Juge, par rapport aux trois semaines...

LE TRIBUNAL: Oui.

M. RANCOURT: ...si je peux me permettre. J'ai - j'ai très peu de connaissance sur comment un procès fonctionne. Je n'ai pas la - les connaissances pour savoir la durée de ce procès, mais j'ai une bonne idée des défenses que j'ai élaborées dans mon - dans mon énoncé de défense, et des témoins que je voudrais interroger. Et étant donné qu'il y a - je pense qu'on est rendu juste - ensemble, il y a une trentaine de témoins, parce qu'il y a beaucoup de témoins du côté de Mme St. Lewis. Je me souviens pas ma liste, il y en a combien, mais je pense que je suis rendu à - excusez-moi, c'est quoi le chiffre là? Seize, je suis rendu à 16 témoins possibles de mon côté. Donc....

LE TRIBUNAL: Parce que je vois que c'est une question de diffamation finalement.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc, est-ce que les mots utilisés dans votre blog, est-ce que c'est diffamatoire? Le blog existe, ce n'est pas contesté, je crois?

M. RANCOURT: Le....

LE TRIBUNAL: Il devrait y avoir de la preuve - des admissions des faits qui ne seront pas nécessaires de prouver. Ça c'est quelque chose qu'on peut parler au pré-procès. Mettons, c'est admis qu'à une telle date que vous avez publié un blog, ta-ta-ta, j'imagine.

M. RANCOURT: Mais, M. le Juge, comme vous le savez bien, une fois qu'on a établi que quelque chose est diffamatoire, la....

LE TRIBUNAL: Ah, non, non, j'ai pas dit - ça c'est au jury...

M. RANCOURT: Oui.

LE TRIBUNAL: ...de décider est-ce que les mots - bon, ils vont appliquer le test. Et puis - donc - mais ça c'est...

M. RANCOURT: Mais le point....

LE TRIBUNAL: ...les faits qui sont en dispute.

M. RANCOURT: Oui.

LE TRIBUNAL: Le fait qu'il y a une publication, l'article, ce n'est pas en dispute. Selon vous, vous avez le droit de faire, selon vos droits d'expression libre.

M. RANCOURT: La question factuelle....

LE TRIBUNAL: Ça c'est votre position. Eux autres disent, "Non, non, non, c'est diffamatoire." Donc - mais le fait que vous avez publié un blog, je crois ce n'est pas contesté. Est-ce que c'est contesté? Non.

M. RANCOURT: M. le Juge, la durée du procès...

LE TRIBUNAL: Oui.

M. RANCOURT: ...dépend, en partie, pour établir ces faits-là, mais en grande partie, pour établir la défense, les défenses qui sont possibles. Et ces défenses-là demandent une élaboration et demandent plusieurs témoins. C'est les défenses qui prennent du temps.

LE TRIBUNAL: Mais je devrais vous aviser que la preuve dans un procès - on est en avance - ce

n'est pas comme un examen au préalable.

M. RANCOURT: Non.

LE TRIBUNAL: Okay, il faut que les témoins témoignent de leurs connaissances, de la preuve pertinente au dossier.

M. RANCOURT: Oui, tout à fait.

LE TRIBUNAL: Et s'ils ont cette preuve-là, ils peuvent le dire. S'ils l'ont pas, bon ben la cour, le juge de procès il ne laisserait pas une...

M. RANCOURT: Non, et donc ça va....

LE TRIBUNAL: ...discussion: Est-ce que tu avais été faire du magasinage cette journée-là? Est-ce que vous avez acheté du fromage? Non, ça ne peut pas aller de même.

M. RANCOURT: Non, je comprends.

LE TRIBUNAL: Sinon ça finirait jamais.

M. RANCOURT: Bien sûr. Je comprends que certains des témoins, ça va être très rapide parce que....

LE TRIBUNAL: Pour moi c'est plutôt votre argument légal: Est-ce que vous avez le droit d'exprimer vos opinions de cette façon-là?

M. RANCOURT: Um-hmm.

LE TRIBUNAL: C'est ça, c'est votre - j'imagine une question: Est-ce que c'était malicieux? Bien, ça c'était l'autre - ce serait une autre question, mais il y auraient des questions à prouver selon - mais c'est surtout les faits puis le jury décidera. Est-ce que votre comportement et vos mots ont fait atteinte à la réputation de professeur St. Lewis.

M. RANCOURT: Et si oui....

LE TRIBUNAL: Mais ça ce n'est pas à moi à décider.

M. RANCOURT: Oui.

LE TRIBUNAL: Mais ce sont des - c'est pas vraiment en dispute que vous avez écrit tels tels mots telle date.

M. RANCOURT: Non.

LE TRIBUNAL: Et publié dans un blog.

M. RANCOURT: Oui.

LE TRIBUNAL: Donc, les faits, est-ce que - donc, moi je pensais deux semaines, mais trois semaines je pense que ça devrait être - et si ça dépasse - bon, on ne peut pas être exact avec ces - c'est un estimé.

M. RANCOURT: Um-hmm.

LE TRIBUNAL: Okay. Donc, je crois que c'est dans la - comment est-ce qu'on dit ça en français, « ball park ». C'est dans - c'est dans le « range », je ne sais pas, si c'est trois semaines, quatre semaines, deux semaines. On peut fixer pour trois semaines, puis si ça dépasse, avec jury, ça va continuer.

M. RANCOURT: Et qu'est-ce que vous voulez dire?

LE TRIBUNAL: Avec jury, ça va continuer jusqu'à la fin.

M. RANCOURT: Je ne comprends pas.

LE TRIBUNAL: Procès avec juge, des fois on peut réserver trois semaine, puis si le procès n'est pas complété, il peut y avoir un ajournement à un autre - dans deux mois, quelque chose, parce que - donc....

M. RANCOURT: Mais vous voulez dire que le jury, on demanderait au jury de continuer au-delà des 15 jours, c'est ça?

LE TRIBUNAL: Oui, oui. Oui, oui, c'est ça.

M. RANCOURT: On continue de façon continue jusqu'à tant que ça soit fini.

LE TRIBUNAL: Certain, oui, c'est ça.

M. RANCOURT: Avec le même jury.

LE TRIBUNAL: C'est ça, oui, oui.

M. RANCOURT: Et il y a six membres sur le jury?

LE TRIBUNAL: Six membres.

M. RANCOURT: Est-ce que six membres doivent être présents à chaque audience?

LE TRIBUNAL: Oui.

M. RANCOURT: Les même six membres?

MR. DEARDEN: Yeah.

LE TRIBUNAL: Oui, c'est toujours les mêmes.

M. RANCOURT: Et ça doit être six?

LE TRIBUNAL: Ça doit être six, sauf que - je crois que cinq s'il y a un maladie de quelque chose [sic] ou - non, c'est six.

M. RANCOURT: Oui, et est-ce que - donc, est-ce que le jury, ça doit être unanime, la décision du jury, sur une question?

LE TRIBUNAL: Cinq sur six.

M. RANCOURT: Cinq sur six. Donc, c'est important qu'il y ait six personnes?

LE TRIBUNAL: Bien oui, bien oui. C'est ça le jury, c'est six. Je crois que peut-être il y a une exception. Je sais que, au criminel, c'est 12 personnes, ça peut descendre jusqu'à dix. Je crois que - I'd have to look at that. I believe

a civil jury is six, but if one became ill, you could drop to five, is that right, or not?

MR. DEARDEN: That I actually don't know, Your Honour. I do know it's five out of six to vote on the questions.

THE COURT: Yeah, five out of six, yes.

MR. DEARDEN: But I don't....

LE TRIBUNAL: C'est pas toujours les mêmes cinq sur six, mais, de toute façon, c'est six.

M. RANCOURT: D'accord. Et ça continue.

LE TRIBUNAL: Oui.

M. RANCOURT: Et est-ce que c'est possible d'avoir deux jours, le mercredi d'arrêt, deux jours et de faire....

LE TRIBUNAL: Non, non, non.

M. RANCOURT: Non? Ça doit être....

LE TRIBUNAL: Non, ces gens-là c'est des membres du public. Eux autres ils ont des emplois. On ne veut pas gaspiller le temps des jurés.

M. RANCOURT: Oui, je comprends.

LE TRIBUNAL: Nous autres on est....

M. RANCOURT: C'est des blocs.

LE TRIBUNAL: Bien, oui, ça continue.

M. RANCOURT: D'accord.

LE TRIBUNAL: Oui, oui, il y a fardeau sur vous, Me Dearden d'être prêt avec témoins, organisé, qu'il n'y a pas de délai, parce que ces gens-là, c'est - il ne sont pas payés, surtout le premier deux semaines. Après deux semaines, peut-être. C'est minimum mais ils font ça, un devoir comme citoyen.

M. RANCOURT: Um-hmm.

LE TRIBUNAL: Donc, non, il faut que ça....

M. RANCOURT: Merci de cette information. Donc, les dates que vous proposiez c'était quoi?

LE TRIBUNAL: Bien, les dates c'est flexible.

Dans les mois d'avril, mai ou juin. Ça ne pourrait pas être la semaine du 6 - du 7 avril, ni le semaine du 5 mai, ni le 9 juin. Ce sont trois semaines.

M. RANCOURT: Avril, mai, juin.

MR. DEARDEN: Sorry, Your Honour, could you repeat that please?

THE COURT: There are three weeks that there will be no judge available, no bilingual judges: the 7th of April, the 5th of May and the 9th of June.

M. RANCOURT: Ces semaines entières là? Les semaines entières?

LE TRIBUNAL: Oui, pas mal.

M. RANCOURT: Oui.

THE COURT: Sujet à - it's conference week. They may go right through or they may not, but - le jury peut prendre une pause de deux jours ou quelque chose, si jamais c'est - there's a conference. Some of these conference dates are two days, they're the Wednesday - Wednesday, Thursday, Friday.

MR. DEARDEN: But if we're looking at May, Your Honour,...

THE COURT: Let's look at May.

MR. DEARDEN: ...we would start when?

THE COURT: Well, the week after May 5th is what? Do we have a....

M. RANCOURT: Je n'ai pas un calendrier.

MR. DEARDEN: So I have it as May 12th.

THE COURT: May 12th?

MR. DEARDEN: Yeah, is a Monday.

THE COURT: So let's set the trial for three weeks. May 12th is a Monday. Okay, so that would be - to the 30th of May would be three weeks, and there'd be another week to spare to cover if - if need be. So, on fixe le procès pour trois semaines estimées, débutant le 12 de mai.

M. RANCOURT: Oui.

THE COURT: May 12th, 2014.

MR. DEARDEN: We'll put that in the order as well, Your Honour?

THE COURT: Put that in the order, yes. Donc, ça c'est deux choses. Okay. Donc, les autres items....

MR. DEARDEN: So I've provided, Your Honour, the items that I think cover what Mr. Rancourt wanted to deal with as well, Your Honour.

THE COURT: Okay, let's set a date for the appeal, leave to appeal. Permission de faire appel à la décision sur les dépens.

M. RANCOURT: Oui.

LE TRIBUNAL: J'ai une date pour ça aussi. Est-ce qu'on va faire ça devant le juge Kane aussi? Est-ce qu'il y a objection?

MR. DEARDEN: No, sir.

LE TRIBUNAL: Okay, j'imagine que non.

M. RANCOURT: Pourquoi? Je ne comprends pas comment je pourrais avoir une objection?

LE TRIBUNAL: Non, okay, je vous dis....

M. RANCOURT: Je suis pas devenu son ami depuis -
entre la dernière chose et maintenant.

LE TRIBUNAL: Non, non, il est disponible...

M. RANCOURT: Oui.

LE TRIBUNAL: ...et puis quel - c'est quoi?
J'avais fait des notes. Le 26 ou 27 de
septembre, ou le 10 ou 11 octobre?

MR. DEARDEN: Your Honour, I'm in Berlin running
a marathon that week, so it has to be October -
which was the October date?

THE COURT: October 10th-11th.

MR. DEARDEN: I'm available both of those days.

THE COURT: I don't know what days they are, but
they are days he is available. I'm not assigned.

MR. DEARDEN: The Thursday, Friday.

THE COURT: Thursday, Friday?

MR. DEARDEN: Yeah.

LE TRIBUNAL: Donc, le 10 octobre, Thursday.
Would you like Thursday or you like Friday?

M. RANCOURT: Les deux sont bons pour moi.

LE TRIBUNAL: Okay. Est-ce que vous avez une
préférence?

MR. DEARDEN: Yeah, not a Friday.

M. RANCOURT: Le vendredi. J'allais dire -
j'allais dire vendredi, la préférence, mais....

LE TRIBUNAL: Donc, le jeudi d'abord, le 10?

M. RANCOURT: D'accord.

LE TRIBUNAL: Donc, pour une demi-journée, ça va
prendre une demi-journée? How long, two hours?

MR. DEARDEN: Two hours, Your Honour.

M. RANCOURT: Une demi-journée, le matin,
puis....

LE TRIBUNAL: Okay, le matin fort probable.
M. RANCOURT: Le matin, oui.
LE TRIBUNAL: Ça c'est à 10h00, matin, ...
M. RANCOURT: Oui.
LE TRIBUNAL: ...le 10 octobre.
5 M. RANCOURT: Oui.
LE TRIBUNAL: Okay. So, mediation - ça ça demande....
MR. DEARDEN: Just before that, Your Honour, ...
THE COURT: Yes.
10 MR. DEARDEN: ...factum dates.
THE COURT: Factum?
MR. DEARDEN: Mr. Rancourt's factum and then my factum.
THE COURT: Okay. Factum for M. Rancourt, quelle
15 date?
M. RANCOURT: Le 1^{er} octobre?
THE COURT: Is that....
M. RANCOURT: C'est la date d'après les règles, ça donne sept jours, sans compter les fins de
20 semaine.
LE TRIBUNAL: Oui, mais ça donne pas grand temps à M. Dearden.
M. RANCOURT: Il vient de dire que c'est une motion très simple, et....
25 LE TRIBUNAL: On est au mois de juillet. Août, septembre.
M. RANCOURT: C'est les jours d'après les règles.
THE COURT: Those are tight rules....
30 MR. DEARDEN: We haven't been following the seven-day rule for a long long time in this action, Your Honour.

THE COURT: I see no reason to, you know, squeeze it so tight. That's seven...

M. RANCOURT: Si - si monsieur....

LE TRIBUNAL: Un jour, sept jours.

M. RANCOURT: Si M. Dearden....

LE TRIBUNAL: Mais toi tu es deux semaines avant, one week, and then the - so October - so if you have seven days - so look, if you filed your - if M. Rancourt filed by two weeks ahead of the 10th. So that would be what, September...

MR. DEARDEN: 26th.

THE COURT: ...26th. Then you would file yours within another....

MR. DEARDEN: Say, October 4th.

THE COURT: October 4th.

MR. DEARDEN: The hearing's October 10th.

THE COURT: The hearing's October 10th.

M. RANCOURT: Non, mais je vous signale que, si Mr. Dearden *file* le 4, ça ça me donne quatre jours, sans compter la fin de semaine, d'après les règles. Donc, moi je n'ai aucune extension et lui a une longue extension. Et ça, je vois ça comme injuste.

LE TRIBUNAL: Mettons qu'on a sept-sept. Mettons toi c'est le 26, le 3 d'octobre il y aurait un autre sept jours. It'll be seven days, seven days.

MR. DEARDEN: Well, Your Honour, if I could,...

M. RANCOURT: D'accord.

MR. DEARDEN: ...Mr. Rancourt said he doesn't have seven days. Today is July 31st. He's got months.

THE COURT: He's got 60 days.

MR. DEARDEN: And he filed it, he's got months.

M. RANCOURT: Non, non, ce que je veux dire c'est que....

LE TRIBUNAL: Vous avez le temps depuis aujourd'hui jusqu'au....

M. RANCOURT: Non, non, non, ce n'est pas ça que - c'était pas ça la question, M. le Juge, avec tout respect. Le point est que ça me donne seulement quatre jours pour répondre à tout ce qu'il va soumettre, et ça c'est le minimum d'après les règles, et je trouve ça injuste que M. Dearden a le droit a plusse de temps pour étudier mes documents, mais que moi je n'ai pas plusse de temps pour étudier ses documents. C'est ça que je trouve injuste.

THE COURT: Okay. Well, why don't we back it up. Mettons qu'on s'en va au 22 pour M. Rancourt.

M. RANCOURT: Le 22 c'est un dimanche.

LE TRIBUNAL: Non, c'est un lundi. Oh, je suis sur le 2014. On peut aller de septembre - mettons, on a fixé ça le 10?

M. RANCOURT: Oui.

LE TRIBUNAL: Vous voulez avoir quelle période de temps pour répondre à Me Dearden?

M. RANCOURT: Je veux avoir un temps....

LE TRIBUNAL: Sept jours?

M. RANCOURT: Oui, par exemple.

MR. DEARDEN: But that's not the rules, Your Honour. See, he wants to play the seven-day rule, then...

THE COURT: I'm going to give you more time too.

I'm going to give you more time and give him seven days to respond.

M. RANCOURT: Exact.

THE COURT: Then I might give you - I don't know.

M. Rancourt has two months to prepare his - he's got lots of time. So I'm going to give you some time as well. How much time do you need?

MR. DEARDEN: You tell me, Your Honour.

THE COURT: I mean 10 days?

MR. DEARDEN: Sure.

THE COURT: To respond to - so he's going to file, M. Rancourt - so I'm just going backwards.

MR. DEARDEN: Yeah.

THE COURT: If your materials are to be filed - where is September? - by the 3rd of October, your materials are to be filed by the 3rd of October.

M. Rancourt would then be - have to file his by - 10 days before that would be about the 23rd of September. So that gives you 10 days to respond, and gives M. Rancourt sept jours avant le....

M. RANCOURT: Ben, sans compter la fin de semaines parce que c'est comme ça qu'on compte les jours, ça me donne cinq jours. Donc il a le double. Mais....

LE TRIBUNAL: Oui, mais là vous - la réponse, vous l'avez fait votre....

M. RANCOURT: À partir dy - parce que - parce que ça me prend beaucoup de temps à étudier les matériaux de M. Dearden. Je veux dire, il amène toujours des arguments que je ne connais pas, et cetera. Si je comprends bien, je pourrais soumettre le 23 septembre, qui est un lundi. Et

M. Dearden pourrait soumettre jeudi le 3 octobre.

THE COURT: Okay, that's what I said, didn't I?

C'est ça je viens de dire.

M. RANCOURT: Oui, ça me va.

LE TRIBUNAL: C'est ça que je viens juste de dire.

M. RANCOURT: Excusez-moi.

LE TRIBUNAL: Donc, on est sur la même page. So, Mr. Rancourt will file by September 23rd, which is a Monday, and response by October 3rd, which is - should be about 10 days, your response, and then he has seven days to review your response. So 23rd pour M. Rancourt, puis le 3 octobre pour Mme St. Lewis.

M. RANCOURT: Merci.

THE COURT: Okay, date to re-examine the plaintiff about a date of meeting, is that still required?

MR. DEARDEN: Your Honour, as you see, I'm asking that that be dealt with in writing, but if - and Mr. Rancourt takes the position that it's moot. I have done the cross-examination of Ms. Gervais, and I did learn information from Ms. Gervais that in my - the submission you'll see, whether you'll see it in a factum one way or the other, is enough to dismiss that motion outright from the knowledge that the defendant had prior to the examination for discovery. But, yes, we need to deal with it, get it dealt with. If there is an insistence on having an oral hearing, which I see no need for, I don't need more than 10 minutes because all I am going to do is point you to all

the evidence from the cross-examination that I submit shows Ms. Gervais' bias, lack of independence, that the Court should give no weight to it. And also, the new information I learned from that cross-examination about when Mr. Rancourt came with knowledge about Ms. Gervais' disputing the date that this meeting between her and Professor St. Lewis occurred.

THE COURT: Do I need to hear about this or is this a matter for the trial judge, within cross-examination? What am I supposed to do here? What do you need me to do?

MR. DEARDEN: Dismiss his motion.

THE COURT: The defendant's motion.

MR. DEARDEN: I agree, Your Honour, that that would be my third argument, is you don't file an affidavit of somebody to dispute what somebody says in a pleading or an examination for discovery.

THE COURT: It's a matter for trial.

MR. DEARDEN: I mean, you could dismiss it right now actually. He takes the position it's moot so....

M. RANCOURT: Bon, M. le Juge, j'aimerais être entendu sur cette question, s'il vous plaît,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...avant que vous preniez une décision.

LE TRIBUNAL: Je n'ai pas pris de décision.

M. RANCOURT: Merci.

LE TRIBUNAL: J'essaye de comprendre qu'est-ce que...

M. RANCOURT: J'ai deux choses à dire sur cette affaire.

LE TRIBUNAL: ...vous voulez de moi.

M. RANCOURT: J'ai deux choses à dire.

Premièrement, j'ai déjà avisé formellement la cour, c'est-à-dire vous-même, en lettre, que je ne cherche pas à réexaminer la plaignante.

LE TRIBUNAL: Bon,...

M. RANCOURT: C'est fini.

LE TRIBUNAL: ...ça vient de s'éteindre.

M. RANCOURT: C'est fini, et ça fait longtemps que c'est fini, et je ne comprends pas ce que M. Dearden essaye de faire.

LE TRIBUNAL: Donc, there's no requirement for a further motion.

MR. DEARDEN: Well, what I...

M. RANCOURT: Absolument pas.

MR. DEARDEN: ...request, Your Honour, is you dismiss it right now. He says....

THE COURT: On consent, without costs?

MR. DEARDEN: Sure.

THE COURT: Okay, on consent without costs.

M. RANCOURT: Très bien.

THE COURT: Okay. So this motion, that's Mr. Rancourt's motion to re-examine Ms. St. Lewis concerning the date of a meeting with Ms. Gervais, further examination is dismissed on consent without costs.

MR. DEARDEN: And that will be a separate draft order that we'll prepare, Your Honour.

THE COURT: Okay.

M. RANCOURT: À mon sens, il y a jamais eu une

telle motion séparée, mais ça c'est....

LE TRIBUNAL: Je ne suis pas sûr qu'il y en a eu ou il y en a pas eu. Il y a eu tellement de motions.

M. RANCOURT: Oui, mais à mon sens, il y en a jamais eu, mais il y a un autre point que j'aimerais faire par rapport....

LE TRIBUNAL: Pas sur celui-là, pas sur cette question-là...

M. RANCOURT: Oui.

LE TRIBUNAL: ...parce que c'est réglé. Je ne veux pas faire des....

M. RANCOURT: Parce que le juge Kane a trouvé que ce que M. Dearden fait en examinant Mme Gervais - il a pas utilisé ces mots-là, mais ça veut essentiellement dire c'est un abus de processus. Et j'ai ici son - j'ai aussi sa décision que j'aimerais vous montrer.

LE TRIBUNAL: Non. Non, non, non, si c'est réglé, je suis heureux.

M. RANCOURT: Merci.

LE TRIBUNAL: Ça c'est pour quelqu'un d'autre. Compelling defendant....

M. RANCOURT: Donc, si je comprends bien, les examinations de Mme Gervais, il y en aura pas. Ça ne se poursuit plus. M. Dearden a dit sur le record qu'il allait faire une autre motion de refus par rapport à Mme Gervais.

LE TRIBUNAL: Non, ça c'est....

M. RANCOURT: Si je comprends bien, il abandonne ça.

LE TRIBUNAL: Non, non, ça c'est votre motion.

MR. DEARDEN: Never did, never did.

LE TRIBUNAL: Non, non, ça c'est votre motion pour...

MR. DEARDEN: Wrong.

LE TRIBUNAL: ...questionner Mme St. Lewis.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est ça qu'on vient de parler.

M. RANCOURT: Oui.

LE TRIBUNAL: On ne parle pas de - je ne sais pas là, Mme Gervais, où vous êtes rendu avec ça là.

M. RANCOURT: C'est fini.

LE TRIBUNAL: C'est fini?

M. RANCOURT: Oui, parce que on vient d'annuler la motion pour laquelle c'était....

THE COURT: So, it's finished.

M. RANCOURT: Ben, c'est ce que je veux confirmer avec M. Dearden. Il ne va plus examiner Mme Gervais.

LE TRIBUNAL: Mais ça ce n'est pas la question qu'on vient de faire une ordonnance.

M. RANCOURT: Nous venons de faire....

LE TRIBUNAL: Ça c'était un autre sujet On vient au prochaine sujet, c'est ça?

M. RANCOURT: Non.

LE TRIBUNAL: Parce que le consentement qu'on a eu, c'est qu'il y a pas de motion, votre motion pour réexaminer Mme St. Lewis sur la question d'une date de rencontre entre Mme Gervais et Mme St. Lewis.

M. RANCOURT: Oui.

LE TRIBUNAL: Ça c'est....

M. RANCOURT: C'est fini.

LE TRIBUNAL: C'est fini.

M. RANCOURT: Oui.

LE TRIBUNAL: C'est ça, je viens de faire cette ordonnance, mais là vous parlez d'une autre.

M. RANCOURT: Je parle de quelque chose qui est relié.

LE TRIBUNAL: Okay.

M. RANCOURT: Et je suis en train d'essayer de faire admettre à M. Dearden, s'il veut bien l'admettre, qu'il va arrêter d'examiner Mme Gervais dans cette affaire.

THE COURT: Is he finished with any further discoveries of Ms. Gervais?

MR. DEARDEN: Your Honour, at no time did I tell this defendant that I wanted to grant...

THE COURT: More examination, more questions.

MR. DEARDEN: ...refusals motion with respect to the cross-examination I've conducted of Ms. Gervais. She's done.

THE COURT: So that's finished. Okay.

MR. DEARDEN: She's done, and the dismissal of this - of the rest of his refusals motion on the examination for discovery of Professor St. Lewis is finished. Her examination is done.

THE COURT: Done.

MR. DEARDEN: So then we only have the next item which is his exam.

THE COURT: He wants to confirm that there's no further examinations of Ms. Gervais.

MR. DEARDEN: No, and there never was any intention to further examine her or bring a refusals motion. I crossed her.

M. RANCOURT: Le procès-verbal est clair sur ce point, mais c'est une autre question.

THE COURT: So there'll be an order that there are no further examinations or cross-examinations, I guess, of Ms. Gervais.

MR. DEARDEN: No, it's done.

THE COURT: Okay, so that's....

M. RANCOURT: Donc, ça sera....

THE COURT: Do you want to put that in the order? Put that in the order.

M. RANCOURT: Oui, est-ce que M. Dearden peut confirmer qu'il va mettre ça dans l'ordre qu'il va....

LE TRIBUNAL: Oui, it can be in the order, no further, I guess, cross-examinations.

MR. DEARDEN: No further cross-examinations of Ms. Gervais and the examination for discovery of Professor St. Lewis is complete.

THE COURT: Yes.

M. RANCOURT: Non, c'était pas exactement ce qu'on a dit.

THE COURT: St. Lewis is dismissed. His motion....

M. RANCOURT: La motion sur l'item qui avait été "carved out", comme vous dites en anglais, est abandonnée. Ce n'est pas la même chose que de dire que les découvertes sur Mme St. Lewis sont terminées. Il y a rien qui empêche une motion à l'avenir qui pourrait chercher plus de découverte. Ça ne serait une motion avisable.

LE TRIBUNAL: Non, non, non.

M. RANCOURT: Ça ne serait pas une bonne idée,

mais il y a rien qui l'empêche.

LE TRIBUNAL: Mais on vient de - dismissed your motion.

M. RANCOURT: Oui.

LE TRIBUNAL: On vient de rejeter votre motion pour un autre - d'autres examens de Mme St. Lewis sur la question....

M. RANCOURT: Sur une question très précise qui avait été "carved out".

LE TRIBUNAL: Oui.

M. RANCOURT: Oui.

LE TRIBUNAL: Mais là....

M. RANCOURT: J'aimerais juste demander que M. Dearden, quand il va faire l'ordre, qu'il va « drafter » ça, qu'il l'écrive avec précision, sur exactement les choses qui ont été décidées, et non de façon générale.

LE TRIBUNAL: Mais là il n'y a pas de question que vous avez l'intention de faire d'autres examens...

M. RANCOURT: Non.

LE TRIBUNAL: ...de Mme St. Lewis?

M. RANCOURT: En ce moment, je n'ai pas cette intention.

LE TRIBUNAL: Et je pense que c'est fini, vous avez fait l'interrogatoire.

M. RANCOURT: En ce moment, je n'ai pas cette intention-là.

THE COURT: Okay, so we can leave it quiet then; we have dismissed his motion for further....

MR. DEARDEN: Right, so he has no right....

THE COURT: He has no right.

MR. DEARDEN: No right. The examination is done. All of his refusals now have been dealt with on Professor St. Lewis's examination for discovery. It's done.

THE COURT: He's pointing out the possibility that there might be something else. I don't know.

M. RANCOURT: Tout ce que je demande, c'est que les mots de l'ordre soient précis, s'en tiennent à la chose précise et ne soient pas généraux.

THE COURT: His motion is dismissed on consent without costs, for further questioning of Professor St. Lewis.

MR. DEARDEN: And that was the only issue remaining with respect to the examination for discovery of Professor St. Lewis, and that's why it's done.

LE TRIBUNAL: Il n'y a pas d'autres questions - il n'y a pas d'autres items?

M. RANCOURT: Non.

THE COURT: Okay.

MR. DEARDEN: Okay.

THE COURT: That's fine then. And no further cross-examination of Ms. Gervais?

MR. DEARDEN: Correct.

THE COURT: Okay, March 6th, compelling the defendant to re-attend for examination for discovery.

MR. DEARDEN: So, Your Honour, if I might....

THE COURT: That's M. Rancourt.

MR. DEARDEN: Yeah, that's the only remaining issue. Your Honour, do you have - you may not

have handy. I'm going to hand you a copy of the July 17th letter that I sent you, where I included four draft orders that we needed you to execute. And I've got separate copies of those. And it seems the only contentious order....

THE COURT: I have them actually here.

MR. DEARDEN: Okay.

THE COURT: I have copies.

MR. DEARDEN: So I think - Mr. Rancourt can indicate whether he disputes the three other orders so that we could deal with those right away. The tab A, C and D orders, I don't understand there's any contention with those, to get those signed.

THE COURT: One, two. I think I only have three orders in the package.

MR. DEARDEN: Oh, here, I'll give you four.

THE COURT: Wait a minute, here's another one.

M. RANCOURT: Maybe the fourth one is the contentious one.

THE COURT: Okay, this is probably - I think I have four. So let's leave the contentious one for the moment.

M. RANCOURT: C'était l'onglet B, juste pour être clair.

LE TRIBUNAL: Moi j'ai ça dans un paquet ici, broché ensemble. So the - how about the one, "Compelled plaintiff to answer further questions. The court orders the defendant's motion to compel plaintiff to provide further questions is dismissed with costs." Any objection to that one?

MR. DEARDEN: Tab A.

LE TRIBUNAL: Le 6 de mars. Uh?

MR. DEARDEN: Tab A. I'm just talking to Mr. Rancourt, tab A.

M. RANCOURT: C'est-à-dire que je n'ai pas d'objection aux onglets A, C et D.

THE COURT: Okay, I'll sign them. Are they all on the 6th? One is the....

MR. DEARDEN: No, Your Honour, one's the 25th of June, and one's the 17th of June.

THE COURT: The 25th of June, and the 17th of June. Any objection to the 25th of June or the 17th of June, to the orders, and then maybe....

M. RANCOURT: La seule où j'ai des problèmes, c'est celle qui se trouve à l'onglet B.

LE TRIBUNAL: Okay, ça c'est daté le 6 mars 2013? "Re-attend to answer further questions about the written answers given to the written" - well, written answers given subsequently to the refusals, is that the one? C'est ça, il y a quatre paragraphes?

M. RANCOURT: Oui, il y a quatre paragraphes numérotés.

LE TRIBUNAL: Okay, les autres vous êtes d'accord.

M. RANCOURT: Oui.

LE TRIBUNAL: Okay, donc, je vais les signer. Okay, so those three orders are signed. Shall I hand them back?

MR. DEARDEN: Yes, please, Your Honour, and we'll have them entered and provide a copy to Mr. Rancourt.

THE COURT: Copy to Mr. Rancourt.

M. RANCOURT: Alors, concernant l'autre ordre.

THE COURT: This letter must be something else for you. Is this a letter to Mr. Dearden from Mr. Rancourt? I'm not sure. This might have been handed with the order, upcoming mediation with assigned judge, Mercier report? I don't know. I think that's some other....

MR. DEARDEN: That had to do with the mediation, Your Honour.

THE COURT: Okay.

MR. DEARDEN: It was part of a letter I sent to David.

THE COURT: Okay. That was attached to the letter you sent.

MR. DEARDEN: Yes today, but that dealt with the mediation issue.

THE COURT: Okay, so then the only - la dernière question c'est l'ordonnance. Est-ce que les questions que vous avez répondues par écrit, est-ce que M. Dearden a le droit de faire des "follow-up" ou des suivis à ces réponses?

M. RANCOURT: Alors, j'aimerais faire des soumissions très clairement.

LE TRIBUNAL: Oui.

M. RANCOURT: Premièrement, je suppose que vous avez reçu ma lettre en réponse à la lettre de M. Dearden, qui est une lettre datée du 22 juillet, où le sujet est "Objection to Mr. Dearden's draft order for discovery refusals".

MR. DEARDEN: If you don't have it handy, Your Honour, I have an extra copy.

THE COURT: I have a stack of them here.

MR. DEARDEN: It should have three tabs, I think.

THE COURT: Strenuous objection?

M. RANCOURT: Oui.

LE TRIBUNAL: C'est celui-là?

M. RANCOURT: Oui.

THE COURT: The section - votre point, ce n'est pas spécifiquement mentionné dans ma décision.

M. RANCOURT: Alors, voici.

LE TRIBUNAL: Est-ce que c'est ça votre point?

M. RANCOURT: J'aimerais faire quelques minutes de soumissions, si vous permettez. J'ai déjà été examiné pour découverte une deuxième fois, pendant sept heures de temps, et j'ai répondu précisément à toutes les questions qui avaient été ordonnées de répondre et aux questions de suivi. Et j'ai ici, pour vous, un document qui montre juste les lettres de couverture de tout ce que j'ai donné pendant ce temps.

LE TRIBUNAL: Non, non, non. Je ne suis pas intéressé de le voir.

M. RANCOURT: Bon. Alors, ce que j'essaye de vous dire c'est que j'ai été maintenant découvert pendant - examiné pour découverte pendant 14 heures, et que la deuxième fois qui a duré sept heures, j'ai donné en détail plus de 150 documents et j'ai répondu à toutes les questions qui avaient été posées, qui avaient été ordonnées explicitement par vous-même, dans votre ordre, pour répondre à des questions.

LE TRIBUNAL: Bien, premièrement, Mr. Dearden, are you intending to have further examinations of

Mr. Rancourt?

MR. DEARDEN: Your Honour, I haven't had time to look at what he's refused to answer in terms of questions that he actually agrees he was ordered to answer. What I have in the order and what we're dealing with right now is his interpretation of your March 6th reasons, that I wasn't allowed to ask him follow-up questions on those written answers that he provided after the refusals motion was filed. He says that, when you wrote "answered" in your reasons, that's it, that was the end. So what he's trying to do is convert an oral examination into a written interrogatory by saying, "Oh, I can refuse most of the questions", and those are the words he used when he provided written answers, "most of the questions". So I get months to think about what the answer's going to be, and Judge Smith, he says, ordered that I don't have to answer any follow-up questions. When I argued the motion....

THE COURT: I don't think I made the order one way or the other on that issue.

MR. DEARDEN: I specifically asked...

THE COURT: You asked for it, yeah.

MR. DEARDEN: ...for it because it's so unfair to allow him - and it would be like if you gave the answer, of course you could ask the follow-up. If you order him to answer a question, you get to ask follow-ups, of course you do.

THE COURT: Right.

MR. DEARDEN: So what....

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M. RANCOURT: Avec tout respect, M. le Juge, M. Dearden a déjà fait ces arguments qu'il est en train de faire en détail pendant la motion de refus. Vous les avez entendu ses arguments, et vous avez écrit des raisons qui sont écrites en anglais et qui sont écrites avec grande précision. Et vos raisons disent la chose suivante au paragraphe 13. Entre autres, ça dit, "I order that Rancourt answer any follow-up questions to those that I have ruled he must answer".

MR. DEARDEN: He didn't read - Your Honour, he didn't read the first part of paragraph 13.

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M. RANCOURT: J'ai lu juste la phrase qui donne l'ordre. Je n'ai pas lu la phrase avant qui donne le contexte, qui donne l'argument de M. Dearden. J'ai lu la décision. Et la décision dit, "I order that Rancourt answer any follow-up questions to those that I have ruled he must answer". Et ensuite, dans la décision, vous traitez chaque question spécifiquement, et dans chaque cas vous dites soit, "I rule that it be answered" ou vous dites, "It has been answered." C'est très clair, c'est en anglais, et si je ne peux pas me fier aux langages des raisons, alors que j'ai déjà été examiné, je trouve ça une injustice fondamentale, et je m'objecte très sévèrement si on peut écrire un ordre après que les raisons ont été écrites, qui change complètement le sens des raisons. Moi je trouve ça injuste, fondamentalement injuste.

THE COURT: That's why I'm asking: Are there

further follow-up questions to the written answers?

MR. DEARDEN: Oh yes, Your Honour. I asked him a number of questions and put them on the record because he absolutely refused to answer any question. But I put them on the record anyway.

THE COURT: No, no, I know we did that.

MR. DEARDEN: No, in the July 5th examination. So the second examination for discovery, one of my first questions was off of a written answer that he had provided and he said, "No, I don't have to answer any questions about the written answers I gave you after I filed the refusals motion," because he took this one sentence....

M. RANCOURT: Non, c'est faux, je n'ai pas dit ça.

MR. DEARDEN: Just a second, Mr. Rancourt.

M. RANCOURT: Non, mais c'est faux.

MR. DEARDEN: Your Honour, could I finish please?

THE COURT: Just a second, just a second. Let him finish.

MR. DEARDEN: Your Honour, I'll just back up for a second, and I wonder if Mr. Rancourt could sit down while I make submissions on this.

M. RANCOURT: Oui, avec plaisir.

MR. DEARDEN: In paragraph - when we argued this motion, Your Honour, and my July 22nd letter sets out what I had argued before you from the transcript, where I made the request that it be clear that I could ask follow-up questions to the written answers he provided after I filed the refusals motion. You recall, Your Honour, when

we were doing this, the first thing I did in the motion was I said, "Your Honour, I'm going to identify where he's answered from the written question", and you wrote "answered".

THE COURT: Right.

MR. DEARDEN: That's why you wrote "answered", because he answered them.

THE COURT: Yes.

MR. DEARDEN: Then I said I want to make a specific request that, if I choose, I can ask follow-up questions out of these written answers that he's given. And your paragraph 13, in my respectful submission, he's ripping it completely out of context by just reading the one sentence that he's reading because you do point out:

"In addition after the motion was brought, and shortly before it was heard, Rancourt answered many of the questions he had refused to answer during his examination for discovery. St. Lewis requests the right to ask follow-up questions if required in order to avoid wasting further time and incurring further legal costs to both parties. [And there's a period there.] I order that Rancourt answer any follow-up questions to those that I have ruled he must answer. If Rancourt objects to answering any follow-up questions, then he may record his objection on the record but must answer that question. I will then decide

subsequently if Rancourt's objection to answering the follow-up question was a valid objection or not."

What's the waste of time you we're trying to avoid, Your Honour? What we're doing right now. That was "answer the follow-up questions to the written answers". He cannot - in fairness, the unfairness would be that he's been ruled that he improperly refused to answer these questions, waited a number of weeks and answered them in writing after he had time to think up the answer, and then he says, "You can't ask follow up questions," because, you know, he's converting an oral examination into a written interrogatory. That's the gross unfairness here. And he's ripping out of context what you had decided on March 6th. Of course I'm entitled to ask follow-up questions to written answers given after a refusals motion has been filed.

M. RANCOURT: Avec tout respect, M. le Juge, avec tout respect, il n'est pas contesté que M. Dearden a fait ces arguments-là.

LE TRIBUNAL: Oui.

M. RANCOURT: Il n'est pas contesté qu'il a fait ces arguments-là, mais vous avez écouté ses arguments...

LE TRIBUNAL: Non.

M. RANCOURT: ...et vous avez écrit des raisons....

LE TRIBUNAL: Non, ce n'était pas mon intention de....

M. RANCOURT: M. le Juge, la raison que vous avez

dit que je dois répondre aux "follow-up questions," chose que j'ai fait...

LE TRIBUNAL: Oui.

M. RANCOURT: ...pour ne pas perdre de temps,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...c'était des "follow-up questions" aux questions que vous avez ordonnées que je réponde, et j'ai fait ça, et je l'ai fait avec précision. On l'a fait pendant sept heures de temps.

LE TRIBUNAL: Oui, oui, mais moi je n'avais pas - ce n'était pas nécessaire de faire l'ordonnance parce que vous l'avez admis vous-même que vous devriez les répondre parce que vous avez fait des réponses.

M. RANCOURT: Oui, j'ai fait des réponses, et elles étaient répondues.

LE TRIBUNAL: Oui, mais j'ai pas vraiment traité de ces questions parce que c'était répondu par vous.

M. RANCOURT: Vous y avez....

LE TRIBUNAL: Donc, moi je devais concentrer surtout sur les....

M. RANCOURT: Au contraire, M. le Juge.

LE TRIBUNAL: Non, non.

M. RANCOURT: Vous avez traité explicitement, vous avez dit dans vos raisons, "It was answered."

LE TRIBUNAL: Non, non. Bien, je n'ai pas dit qu'il n'avait pas le droit de faire des "follow-up", des questions de suivi sur des questions écrites. Ça je n'ai pas - je crois que je n'ai

pas fait d'ordonnance....

M. RANCOURT: Votre langage est clair, M. le Juge.

LE TRIBUNAL: Non, pas selon moi, ce n'était pas mon intention.

M. RANCOURT: "To those that I have ruled he must answer".

LE TRIBUNAL: Non, moi....

M. RANCOURT: Si je ne peux pas....

LE TRIBUNAL: Moi je parlais - la dispute entre vos deux à ce moment-là c'était des questions que vous avez refusées.

M. RANCOURT: Oui.

LE TRIBUNAL: Moi je traite des disputes. Quand il y a une dispute, je fais des décisions sur la question en dispute. Vous l'avez répondu. Selon moi, je n'ai pas tranché la question de: Est-ce qu'il devrait y avoir des "follow-up questions on" - sur les réponses par écrit? Je n'ai sûrement pas dit non. J'ai - si je n'ai pas dit....

M. RANCOURT: Si vous ne l'avez pas tranché, vous ne pouvez pas le trancher en signant un ordre. Ça me semble complètement injuste.

LE TRIBUNAL: Okay, on pourra fixer une autre motion, but I'm going to say we'll do this motion now. On va le faire maintenant. On n'est pas pour faire une autre motion pour dire: Est-ce que - would there be follow-up questions to the questions that you answered voluntarily, après vous avez refusé? Je ne suis pas pour avoir une autre ordonnance, une autre motion dans mettons

un mois.

M. RANCOURT: Je trouve ça incroyable. Votre phrase est très claire.

LE TRIBUNAL: Non, non, non, non, non. S'il y a un confus, it would be my intention - c'était mon intention - selon moi, j'ai réglé les questions que vous avez refusées.

M. RANCOURT: Oui.

LE TRIBUNAL: J'ai concentré sur les refus.

M. RANCOURT: Et c'était le but de la motion de refus.

LE TRIBUNAL: C'était le but de la motion de refus.

M. RANCOURT: Et on a satisfait ce but-là avec sept heures d'investigation. Et maintenant, M. Dearden veut gratuitement avoir une autre motion de refus....

LE TRIBUNAL: Non, mais s'il y a des autres questions - vous avez répondu à la plupart de ces refus. Vous avez volontairement répondu par écrit à la plupart. Je ne sais pas, il y en avait - je ne me souviens pas les nombres. Vous avez répondu à plusieurs.

M. RANCOURT: M. Dearden veut gratuitement avoir accès à une autre motion de refus. Il veut gratuitement avoir plusse que 14 heures pour m'examiner. Je ne suis pas une corporation, je suis un individu qui a répondu à toutes ses questions...

LE TRIBUNAL: Non, mais....

M. RANCOURT: ...et il veut faire ça en vous faisant signer un ordre...

LE TRIBUNAL: Non. Okay, laisse-moi....

M. RANCOURT: ...qui n'est pas consistant.

LE TRIBUNAL: Non, moi j'avais jamais fait une ordonnance que Mme St. Lewis ne pouvait pas vous poser des questions de suivi aux réponses que vous avez faites par écrit. Ça je n'ai pas dit oui, selon moi, et je n'ai pas dit non.

M. RANCOURT: Et si vous ne dites pas oui, ça veut dire que je n'ai pas besoin de le faire parce que M. Dearden l'a argumenté en détail et vous ne lui avez pas dit oui. Et ça ça veut dire pour moi...

LE TRIBUNAL: C'était....

M. RANCOURT: ...que je n'ai pas besoin de le faire. Et en plus, vous dites explicitement, "to those that I have ruled he must answer".

THE COURT: Okay, I would have intended this to include the follow-up to any questions, des questions que vous avez répondues par écrit, parce que ça c'est le droit, c'est la loi.

M. RANCOURT: Vous avez....

LE TRIBUNAL: Non.

M. RANCOURT: Vous avez déjà dit que vous n'avez pas fait la détermination, M. le Juge, avec tout respect.

LE TRIBUNAL: Non, selon moi - puis là je suis prêt de le faire maintenant.

M. RANCOURT: Oui, si on doit faire une motion maintenant,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...moi ce que je demande,...

LE TRIBUNAL: Oui.

M. RANCOURT: ...moi ce que je demande c'est la chose suivante.

LE TRIBUNAL: Oui.

M. RANCOURT: C'est que, quand vous signez cet ordre - on peut faire une autre motion, on peut le faire aujourd'hui.

LE TRIBUNAL: C'est ça que je suis après faire.

M. RANCOURT: Mais - mais cet ordre-là ne correspond pas à vos raisons, et je refuse que vous dites que cet ordre-là que M. Dearden a écrit...

LE TRIBUNAL: Okay.

M. RANCOURT: ...corresponde à vos raisons.

LE TRIBUNAL: Okay, on pourrait faire un autre ordre, ordonnance.

M. RANCOURT: Oui. Ça....

LE TRIBUNAL: J'ai l'intention de limiter le temps.

M. RANCOURT: Oui.

LE TRIBUNAL: Parce que - what about time limits?

MR. DEARDEN: So, Your Honour, can....

THE COURT: Because this is not an endless....

MR. DEARDEN: I understand that, Your Honour, and all I want the record to note, that when Mr. Rancourt keeps chanting that I've done 14 hours of discovery, the translation here doesn't occur like right now, where I'm getting it simultaneously. The translators will translate after the answer. So it's really almost half the time, okay? Like I don't get it simultaneously, I have to wait to get the translation from French to English, so that eats up a lot of time. It's

not 14 hours, but regardless,...

M. RANCOURT: Non.

MR. DEARDEN: ...it's just so unfair for...

M. RANCOURT: C'est pas vrai parce que....

MR. DEARDEAN: ...Mr. Rancourt to be doing what he's trying to do.

THE COURT: He's objecting in principle, I think.

M. RANCOURT: Oui.

THE COURT: I think he's....

M. RANCOURT: Tout à fait.

MR. DEARDEN: But Your Honour's already agreed, we're converting it into a motion.

THE COURT: Yes, right now.

MR. DEARDEN: And you've ordered him because it's trite.

THE COURT: It's the law. Tu as le droit d'un suivi...

M. RANCOURT: Évidemment.

LE TRIBUNAL: ...si c'est pertinent.

M. RANCOURT: Je ne suis pas d'accord. Dans cette motion qu'on argumente maintenant,...

LE TRIBUNAL: Oui, oui.

M. RANCOURT: ...je suis de l'opinion que M. Dearden a eu suffisamment de temps pour m'examiner et que c'est un abus d'avoir plusse de temps que les 14 heures qu'il a déjà eues. Et la - l'interprétation dans les premiers sept heures était simultanée, contrairement à ce que M. Dearden dit. Et la - l'interprétation a été très efficace, et ne va que du français à l'anglais, la moitié. Donc, je ne suis pas d'accord avec ce que dit M. Dearden, mais -

premièrement, il ne faut pas que cet ordre soit signé par rapport à la première chose. Là on fait une nouvelle motion.

LE TRIBUNAL: Oui.

M. RANCOURT: Je pense qu'on est d'accord là-dessus.

LE TRIBUNAL: Oui.

M. RANCOURT: Okay, merci.

LE TRIBUNAL: On va....

M. RANCOURT: Et la nouvelle motion,...

LE TRIBUNAL: Mais là l'autre motion....

M. RANCOURT: ...je voudrais que le temps soit limité très très strictement parce que M. Dearden a beaucoup beaucoup de questions et il estime qu'il a droit à toutes les questions de "follow-up" et ça n'arrête pas. Donc, je veux vraiment que ça soit limité. Il a déjà eu 14 heures, M. le Juge.

THE COURT: How much time do you need for follow-up?

MR. DEARDEN: Half a day, Your Honour.

THE COURT: Half a day?

MR. DEARDEN: Yup.

M. RANCOURT: C'est complètement....

MR. DEARDEN: You know what he - what Mr. Rancourt did as well when we started this, so you know, another - I'm just remembering in terms of him keeps on saying I used 14 hours. We took half an hour, Your Honour, for him to put to me, which he didn't give it to me in advance, an extra hundred documents or more that he produced. So he's produced a third affidavit of documents

the day of the examination, put them on the record and ate up about 30 minutes of time, of which I haven't even read the new productions that he's given me. And I haven't read the transcript, Your Honour, to see on questions that he agreed he had to answer and refused to answer. I haven't scoped out yet whether there would be a need, and I'm hoping there isn't a need to bring a refusals motion on some of those legitimate - that he concedes were legitimately asked questions. So on this one, Your Honour, so there'd be one order - so if we're looking at tab B, the order is just going to say what's in paragraph 1.

LE TRIBUNAL: Paragraphe 1?

MR. DEARDEN: Just paragraph 1.

M. RANCOURT: Je crois c'est ce que j'avais dit, oui. Mais - non, j'avais proposé un paragraphe 1 qui serait plus précis, que j'avais mis dans ma lettre à M. le Juge, qui est....

MR. DEARDEN: Which letter?

M. RANCOURT: Qui est au paragraphe 12 de ma lettre du 22 juillet. Et j'avais proposé le paragraphe suivant:

"This court orders the defendant to answer the questions ruled to be answered, and to attend a re-examination to answer reasonable follow-up questions to those ruled to be answered, as ruled in the reasons for decision on Ms. St. Lewis' discovery refusal motion dated March

6th, 2013".

Ça c'est le paragraphe que moi je propose, qui dit exactement ce qui est dans les raisons, c'est ça qui a été ordonné. Et j'ai - c'est à la page 3 de ma lettre du 22 juillet.

LE TRIBUNAL: Vous dites la même chose.

M. RANCOURT: Ah, c'est pas tout à fait la même chose.

LE TRIBUNAL: Je crois qu'on s'astine sur des - les mêmes....

M. RANCOURT: Oui, mais c'est....

THE COURT: What is the difference?

M. RANCOURT: Je pense que mon texte est plus précis, mais c'est essentiellement la même chose.

LE TRIBUNAL: Toi c'est meilleur, selon vous c'est plus - c'est meilleur que le texte de monsieur....

M. RANCOURT: Je suis d'accord que c'est essentiellement la même chose pour le paragraphe 1.

THE COURT: Do you have that, Mr. Dearden? I don't know if there's - it's simply saying he's to re-attend. He's already re-attended.

MR. DEARDEN: He's already done it.

THE COURT: So I mean, it's somewhat academic. I don't know if the wording....

M. RANCOURT: Tout à fait, c'est tout à fait académique. Moi je....

THE COURT: Is it just for completeness, I think, for the record.

MR. DEARDEN: We have to have an order.

THE COURT: Yeah, you need the order. There

should be an order to complete. On fait ça d'habitude. So is Mr. Rancourt's wording fine?

MR. DEARDEN: No, the court doesn't put "reasonable follow-up,"...

THE COURT: No.

MR. DEARDEN: ...it just puts "follow-up".

THE COURT: Whatever I...

MR. DEARDEN: So then mine is identical other than the word "reasonable".

THE COURT: What did I say in the decision? Did I say...?

M. RANCOURT: Vous avez dit "reasonable follow-up".

THE COURT: Did I say "reasonable follow-up questions"?

M. RANCOURT: Oui. Oui, tout à fait.

THE COURT: If I did, then I stick with it.

M. RANCOURT: Tout à fait.

MR. DEARDEN: Well, if you did, then I take that back. I did not recall that. Do you recall, Mr. Rancourt, where that was said?

M. RANCOURT: Est-ce que c'est pas dans le même paragraphe?

MR. DEARDEN: Thirteen?

M. RANCOURT: Peut-être pas. Je m'excuse, j'ai pas....

MR. DEARDEN: No, it says, "follow-up questions".

M. RANCOURT: Dans le paragraphe 13, mais ailleurs ça dit - je pense que - mais je l'ai pas devant moi. Je me souviens pas et je l'ai pas devant moi.

MR. DEARDEN: It's in tab 1 of....

M. RANCOURT: Ah oui, je suis certain que ça disait, "reasonable follow-up questions".

J'avais retenu ça.

THE COURT: Can you take me to where it is in this decision?

M. RANCOURT: Je ne l'ai pas devant moi.

MR. DEARDEN: It's in tab 2 of your July....

M. RANCOURT: Oui, mais que je n'ai pas devant moi.

MR. DEARDEN: Well here, take mine.

THE COURT: I think I just said, "follow-up questions". It doesn't say....

M. RANCOURT: Dans le paragraphe 13, mais ça, le paragraphe 13 est un paragraphe général d'introduction.

LE TRIBUNAL: Mais à ce moment c'était spécifique, là c'est général, M. Rancourt.

M. RANCOURT: Le principe est exprimé spécifiquement avec grande précision.

THE COURT: So, that's the only difference? So then there's no "reasonable" in paragraph 13. So it's the question - and you've done it anyway, so.

M. RANCOURT: Oui.

LE TRIBUNAL: Est-ce qu'il y a objection avec ce paragraphe ici?

M. RANCOURT: Non.

LE TRIBUNAL: Okay. Bon bien, that's fine.

MR. DEARDEN: So we'll re-draft that, Your Honour.

THE COURT: Re-draft that, and how about, then, three hours?

MR. DEARDEN: Three hours.

THE COURT: Three hours maximum, further discovery on follow-up questions to the written answers given by M. Rancourt. Limité à trois heures.

MR. DEARDEN: And, Your Honour, for the wording of that, could we use the wording - and I'm asking Mr. Rancourt to follow me here if he could. The second paragraph of the tab B order, "So the defendant to answer follow-up questions to the written answers he provided on July 17th, 2012", and then we cite the document's title, "Examination not to exceed three hours".

THE COURT: There's two - he provided some on July - there's two different dates that you have there. You have July 17th and 16th. Are they the same thing? There's two different dates, I think, whether - "not to exceed three hours". Could we shorten those things up?

M. RANCOURT: Non, non, non, le paragraphe 3, je m'objecte complètement, parce que ç'a déjà été répondu et j'ai la preuve de ça ici.

THE COURT: So just put number 2,...

MR. DEARDEN: Number 2.

THE COURT: ... "not to exceed three hours."

MR. DEARDEN: "Not to exceed three hours." And can we - I would propose August 15th as a date to do that examination, Your Honour. I don't know what Mr. Rancourt's availability is.

M. RANCOURT: Non, je m'excuse là, mais si on revient à l'ordre, je voudrais que ça soit "des questions de *follow-up* raisonnables". Parce que

je suis de l'opinion de beaucoup de questions ne sont pas raisonnables, et je voudrais que l'ordre dise que je dois répondre à des questions de *follow-up* raisonnables. Si....

LE TRIBUNAL: Non, I think it'll have to be - il faut que ce soit les même mots que j'ai utilisés dans le paragraphe 13, that you can object....

M. RANCOURT: On fait une nouvelle motion en ce moment.

LE TRIBUNAL: Oui.

M. RANCOURT: Et je suis en train d'argumenter que l'ordre devrait....

LE TRIBUNAL: Tu veux avoir ça "raisonnable".

M. RANCOURT: Oui, absolument, parce que....

MR. DEARDEN: No, that gives him too much discretion, Your Honour. He's going to say, "That's not reasonable," and then we're back....

M. RANCOURT: Et c'est moi qui paye le prix si je dis que ce n'est pas raisonnable parce que c'est moi qui va être obligé d'expliquer que j'ai fait quelque chose de pas correct. Mais d'être obligé de répondre à n'importe quelle question, sans aucune discrétion, pendant trois heures de temps, je trouve ça injuste. Et je pense que le mot "raisonnable" donne - va diriger M. Dearden à être raisonnable et va me diriger que moi aussi je dois répondre à tout ce qui est raisonnable. Et donc, j'insiste pour que le mot "raisonnable"....

LE TRIBUNAL: Pas "raisonnable," I'm going to use "relevance".

MR. DEARDEN: Yeah, that's the best.

LE TRIBUNAL: Moi j'utilise "relevant questions".

M. RANCOURT: Okay, merci.

LE TRIBUNAL: Okay.

M. RANCOURT: Merci. Donc, ça va être uniquement le paragraphe 2 avec le mot "relevance"?

LE TRIBUNAL: "Relevance".

M. RANCOURT: Et ça va être – et j'aimerais suggérer que deux heures ça devrait être largement suffisant.

LE TRIBUNAL: Non, non, three hours. J'ai donné trois heures. Dans un procès qui dure – vous avez passé tellement de temps.

M. RANCOURT: Merci.

MR. DEARDEN: But the date, Your Honour, I have asked Mr. Rancourt a couple of times now, is he available August 15th, or the week following if he prefers?

M. RANCOURT: Est-ce que le 16 serait correct avec M. Dearden?

MR. DEARDEN: Sure.

M. RANCOURT: Okay.

THE COURT: So this paragraph will be:

"The defendant to answer reasonable [sic] follow-up questions to the written answers he provided on July 17th, 2002, not to exceed three hours, and to take place on August 16th."

At 10:00 a.m?

M. RANCOURT: Oui.

MR. DEARDEN: Your Honour, could I ask you just to read that back again so that we get it right.

THE COURT: So I'm reading your paragraph 2.

MR. DEARDEN: Right.

THE COURT: "The defendant to answer..."

MR. DEARDEN: "Relevant follow-up questions."

THE COURT: "...all relevant follow-up questions to the written answers he provided on July 17th." Then you have in brackets, "answers of Denis Rancourt" - do we need that?

MR. DEARDEN: It's the title that he has on that document that he provided.

THE COURT: Okay, so we could leave that in?

M. RANCOURT: Mais soyons clairs - non - oui, on peut le laisser le titre, mais soyons clairs que c'est les questions, les "undertakings" ont déjà été répondus, et vous en aviez parlé....

THE COURT: It's not undertakings.

MR. DEARDEN: It's not undertakings.

M. RANCOURT: Okay, d'accord. D'accord.

THE COURT: "Not to exceed three hours, and to take place on August 16th at 10:00 a.m."

M. RANCOURT: Donc, le mot c'est "relevant," n'est-ce pas?

THE COURT: "Relevant."

M. RANCOURT: Okay.

THE COURT: And the procedure to follow, do you want to - est-ce que on veut un suivi? Si mettons M. Rancourt décide que ce n'est pas pertinent et il refuse de répondre, quoi, on va revenir à un autre "refusals"?

M. RANCOURT: Ça dépend de M. Dearden, s'il veut faire une autre motion. Ça va dépendre de M. Dearden.

MR. DEARDEN: No.

M. RANCOURT: Mais je ne prévois pas qu'il y ait des refus parce que je pense que M. Dearden va s'en tenir à des questions qui sont pertinentes.

LE TRIBUNAL: Okay, tu fais confiance en M. Dearden.

M. RANCOURT: Oui.

THE COURT: Okay. Well....

MR. DEARDEN: Your Honour, I think for clarity we should add that last sentence that you – the last couple of sentences you have in paragraph 13 and that says:

“If Rancourt objects to answering any follow-up questions, then he may record his objection on the record but must answer the question. I will then decide subsequently if Rancourt’s objection to answer any follow-up questions was a valid objection or not.”

I think that’s the best way to deal with it.

THE COURT: Is that not the – c'est le moins coûteux, moins dispendieux.

M. RANCOURT: Ça me paraît déjà clair que c'est le cas, parce que je dois répondre à toutes les questions pertinentes, même si je m'objecte.

L'ordre est clair, mais je n'ai pas d'objection à ajouter ça.

THE COURT: Okay, let's put that in. J'espère que – pas que je ne veux pas vous voir encore, mais c'est pour réduire les dépens aussi. Okay. So that will be added, then, that last part to the new paragraph 2. The new paragraph 2 will be

a new order. I think that was....

MR. DEARDEN: Yeah.

THE COURT: Dated today's date, based on an oral motion to add that additional - cette addition à l'autre décision.

M. RANCOURT: Oui, et donc, nous venons de faire une motion en entier aujourd'hui.

LE TRIBUNAL: Oui.

M. RANCOURT: Une nouvelle motion. Nous avons une décision.

LE TRIBUNAL: Oui.

M. RANCOURT: Et je pense que ça s'est fait mutuellement.

LE TRIBUNAL: Oui.

M. RANCOURT: Il n'y aura pas de coût associé à ça?

LE TRIBUNAL: Non, pas de coût.

M. RANCOURT: Merci.

LE TRIBUNAL: Okay. Donc, c'est tout. C'est tout?

M. RANCOURT: Oui.

MR. DEARDEN: Yes, Your Honour.

LE TRIBUNAL: Je pense qu'on a fait du progrès.

M. RANCOURT: Merci beaucoup, M. le Juge.

MR. DEARDEN: Thank you, Your Honour.

THE COURT: So I will file these in my - okay, that's good.

* * * * *

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Certification

FORMULE 2

CERTIFICAT DE TRANSCRIPTION (PARAGRAPHE 5(2))

Je soussignée, Samantha Charlebois, certifie que le présent document est une transcription exacte et fidèle de l'enregistrement de Joanne St. Lewis c. Denis Rancourt portée devant la Cour supérieure de Justice au 161 rue Elgin, Ottawa, Ontario tirée de l'enregistrement n° 0411-35-20130801, qui a été certifié dans la formule 1.

Date

Samantha Charlebois
Sténographe Judiciaire

CETTE TRANSCRIPTION EST CERTIFIÉE COMME ÉTANT FIDÈLE ET VÉRIDIQUE SEULEMENT SI ELLE COMPREND LA SIGNATURE ORIGINALE DE SAMANTHA CHARLEBOIS.